UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

HEALTHBRIDGE MANAGEMENT, LLC; CARE REALTY, LLC aka CARE ONE; 107 OSBORNE STREET OPERATING COMPANY II, LLC D/B/A DANBURY HCC; 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC D/B/A LONG RIDGE OF STAMFORD; 240 CHURCH STREET OPERATING COMPANY II, LLC D/B/A NEWINGTON HEALTH CARE CENTER; 1 BURR ROAD OPERATING COMPANY II, LLC D/B/A WESTPORT HEALTH CARE CENTER; 245 ORANGE AVENUE OPERATING COMPANY II, LLC D/B/A WEST RIVER HEALTH CARE CENTER; 341 JORDAN LANE OPERATING COMPANY II, LLC D/B/A WETHERSFIELD HEALTH CARE CENTER	**Case Nos.**	**34-CA-12715** **34-CA-12732** **34-CA-12765** **34-CA-12766** **34-CA-12767** **34-CA-12768** **34-CA-12769** **34-CA-12770** **34-CA-12771**

and

NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU, AFL-CIO

Thomas E. Quigley, Esq., *Margaret A. Loreau, Esq.* and *John A. McGrath, Esq.* for the General Counsel.
Jonathan E. Kaplan, Esq., *George W. Loveland, III, Esq.* and *Steven W. Likens, Esq.* (Kiesewetter, Wise, Kaplan Prather, PLC), Memphis, TN for Respondents.[1]
Kevin A. Creane, Esq. (Law Firm of John M. Creane), Milford, CT, for the Charging Party.

DECISION

Steven Fish, Administrative Law Judge: Pursuant to charges and amended charges filed by New England Health Care Employees Union, District 1199, SEIU, AFL-CIO (the Union or Charging Party), the Director for Region 34 issued a consolidated complaint and notice of hearing on March 21, 2011, alleging that six nursing homes: 107 Osborne Street Operating Company II, LLC d/b/a Danbury HCC (Respondent Danbury); 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center (Respondent Newington); 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge of Stamford (Respondent Long Ridge); 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center (Respondent West River); 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care

[1] By the time that briefs were filed, the name of the firm representing Respondents had become Littler Mendelson, PC.

Center (Respondent Westport); and 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center (Respondent Wethersfield), collectively called Respondent Health Care Centers, Healthbridge Management, LLC (Respondent Healthbridge) and Care Realty, LLC aka Care One (Respondent Care) violated Sections 8(a)(1) and (5) of the Act.

The complaint also alleged that Respondent Healthbridge, Respondent Care and all six Respondent Health Care Centers constituted a single employer within the meaning of the Act and that the Respondents have also been joint employers at each nursing home.

The complaint further alleges that from February 15, 2009 until May 17, 2010, Respondent (collectively referring to all named Respondents) and Healthcare Services Group, Inc. (HSG) co-determined terms and conditions of employment of the housekeeping and laundry employees employed by Respondents Long Ridge, Newington and Westport and were also joint employers of these employees working at these facilities.

The trial with respect to the allegations in said compliant was held in Hartford, Connecticut on August 11, 12, 30 and 31, September 1 and 2 and October 17, 18 and 19. The parties entered into a mid-trial agreement containing a number of stipulations, which resolved a number of the factual and some legal issues involved in the compliant. The agreement also provided for a guarantee of certain financial obligations should the violations be found. The agreements were reduced to writing and entered into the record on the last day of the trial. Based upon the stipulations contained in the agreement and conditioned upon fulfillment of all the conditions described, Counsel for General Counsel requested withdrawal of the complaint allegations that concern single employer status between Respondent Healthbridge, Respondent Care and the individual nursing homes. I orally granted the conditional withdrawal request.

On November 29, 2011, General Counsel filed a motion to supplement the record with some additional exhibits and to close the record. On December 5, 2011, I granted General Counsel's motion and set a date for briefs.

Subsequently, briefs have been received from Respondents and from General Counsel and have been carefully considered. Based upon the entire record, including my observation of the demeanor of the witnesses, I, hereby, issue the following recommended:

Findings of Fact

I. Jurisdiction and Labor Organization

Respondent Healthbridge is a New Jersey limited liability corporation with its principal office in Fort Lee, New Jersey and offices in other states, including Massachusetts and Connecticut, where it has been engaged in the management of nursing homes and healthcare facilities, including Respondent Danbury, Respondent Westport, Respondent West River, Respondent Newington, Respondent Wethersfield and Respondent Long Ridge.

During the twelve-month period ending February 28, 2011, Respondent Healthbridge derived gross revenues in excess of $100,000 and provided services valued in excess of $5000 in states outside the State of New Jersey.

Respondent Health Care Centers have each been engaged in the operation of nursing homes and long-term care facilities providing convalescent and skilled nursing care. During the twelve-month period ending February 28, 2011, each of the Respondent Health Care Centers derived gross revenues in excess of $100,000 and received at their respective facilities goods

valued in excess of $5000 directly from points outside the State of Connecticut.

Healthcare Services Group Inc. (HSG) is a Pennsylvania corporation engaged in providing housekeeping, laundry and other service relating to the staffing and management of the Respondent Health Care Centers.

During the twelve-month period ending February 28, 2011, HSG provided services valued in excess of $500,000 to Respondent Health Care Centers for use at the facilities located in Connecticut.

Respondent Healthbridge has been at all times material, herein, a joint employer with each of the Respondent Health Care Centers of the employees of each of the Respondent Health Care Centers.

It is admitted, and I so find, that Respondent Healthbridge has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.

It is also admitted, and I so find, that Respondent Health Care Centers have each been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.

It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Facts

A. Background and Bargaining History

Employees at each of the Respondent Health Care Centers have been represented by the Union since the early 1990s. The facilities were, as now, operated separately by separate companies, often with a common managing company.

The Union had collective bargaining agreements with Mediplex, which was part of an operating company called Sunridge, covering service and maintenance units at these six facilities. In August of 2003, Mediplex decided that it no longer wished to operate the facilities. Thus, the six named Respondent healthcare entities were formed. They each hired Haven Health Care (Haven) to manage the facilities. At that time, Haven assumed the collective bargaining agreements with the Union for all the facilities.

In December of 2003, Haven Health Care's management contracts to run the centers were terminated. At that time, a company called Healthbridge Management, Inc. became the manager of the homes and agreed to assume the same contracts that Haven had assumed from Mediplex. Pursuant to a reopener in the prior contracts, negotiations were triggered and Healthbridge Management, Inc. began negotiations with the Union. In the midst of these negotiations, sometime in 2005, the centers all went into bankruptcy. This resulted in the centers failing to make payments into the Union's funds, and litigations between the parties, including a unfair labor practice charge in Case No. 34-CA-10929, where the Region at that time made similar allegations as in the instant case that Care Realty and Healthbridge Management were joint and single employers with the centers and that they violated the Act in various respects.

Ultimately, the parties reached a settlement of all their litigations, which encompassed collective bargaining agreement between the Union and each of the health care centers. Each of these agreements were all effective from December 31, 2004 to March 16, 2011 and were signed on behalf of each health center by Kevin Breslin, listed as executive vice-president of Healthbridge Management, Inc. and an agent. The collective bargaining agreements cover units of service and maintenance employees. The unit inclusions are similar in all contracts but not identical. For example, included in all contracts are certified nursing aides (CNAs) and housekeeping and laundry employees, but the contracts for Respondent Westport excludes registered nurses (RNs) and licenses practical nurses (LPNs) while the contracts for the other centers includes these classifications. The other provisions in the contracts are virtually the same, although there are some variations and differences and different numbering.

Respondent Healthbridge has managed the daily operations of all the health care centers involved since that time. Kevin Breslin is Respondent's executive vice-president and Ed Remillard is Respondent Healthbridge's regional human resources manager. As noted above, the parties have agreed that Respondent Healthbridge has been and is a joint employer of the employees of the six individual Respondent Health Care Centers. Respondent Care Realty, or Care One, owns the properties, where the facilities are located.

As noted above, as a result of the mid-trial stipulations executed by the parties, the General Counsel has withdrawn the single employer allegations in the complaint as to Respondent Healthbridge and Respondent Care Realty. Effectively that withdrawal removed Respondent Care Realty as a Respondent from the instant case.

B. Subcontracting and Successorship Clauses in Contracts

All six contracts with Respondent's facilities include the following identical "subcontracting" and successorship clauses.

> Subcontracting. No bargaining unit work shall be subcontracted unless the subcontractor agrees in advance to retain the Employees and recognize all their rights, including seniority, under this agreement.
>
> Successorship
>
> A. If the Center decides to sell or transfer any of its operations, it will advise the Union at least sixty (60) days prior to the effective date of such sale or transfer. Such notice shall include the name and address of the purchaser.
>
> B. The terms and provisions of this Agreement shall bind all sub lessees, assignees, purchasers or other successors to the business to such terms and provisions, to which the Employees are and shall be entitled under this Agreement. The Center shall require any purchaser, transferee, lessee, assigns, receiver or trustee of the operation covered by this Agreement to accept the terms of this Agreement by written notice. A copy of such notice shall be provided to the Union at least thirty (30) days prior to the effective date of any sale, transfer, lease assignment, receivership or bankruptcy proceedings.

As noted above, in the spring of 2003, Haven became the manager of all six facilities involved in this case on behalf of each facility and by Care Realty, the owner of the properties.

As also reflected above, Haven, when it managed the facilities, agreed to assume the collective bargaining agreement that had been in effect with the Union and Sunridge (Mediplex). This agreement was reflected in a letter from Roy Termini, president and CEO of Haven, to the Union, dated May 27, 2003, wherein Haven agreed to hire all of the 1199 members, recognize their seniority and assume the union contracts as well as obligations due under the prior contracts, including accrued benefits earned under Sunridge.

As also reflected above, in late 2003, Haven was replaced as managing agent of the facilities by Healthbridge Management Co. At that time, all six facilities as well as Healthbridge Management Co. also agreed to hire all union members at all locations, recognize the Union and assume the prior contracts in effect between the Union and Haven (actually negotiated between Mediplex and Sunridge and the Union). This agreement was reflected in a letter from the Union to Kevin Breslin of Care Realty and Healthbridge Management Co. The letter states as follows: "This letter confirms our agreement reached today concerning Care Realty's transfer of its management contract from Haven Healthcare to Healthbridge Management Company at the seven facilities represented by Local 1199."[2] The letter goes on to reflect that all union members will be hired at all of the facilities and the collective bargaining agreements existing between Haven and the Union will be assumed in all respects. It was signed by Kevin Breslin as vice-president of Healthbridge Management, Inc. on November 28, 2003. Thereafter, all the terms of the collective bargaining agreements were applied by all the Respondent Health Care Centers to its employees.[3]

C. Subcontracting of Laundry and Housekeeping Employees

On August 1, 2003, Haven subcontracted the housekeeping and laundry employees for all of the centers to Lighthouse Medical, LLC. The laundry and housekeeping employees at all six facilities were employed by Lighthouse from August 2, 2003 until late November or early December of 2003. During that period of time, Lighthouse agreed to assume and honor all terms of the contracts with the Union for these employees, and insofar as the record discloses, complied with that agreement.

In December of 2003, the subcontracting ended at the same time that Haven's management contract was terminated. At that time, Healthbridge and the facilities hired the laundry and housekeeping as non-probationary employees with their original nursing home, seniority, wages and benefits intact and continued to apply the union contracts to the laundry and housekeeping employees as well as to other unit employees.

In early 2004, the Union and Respondent Healthbridge negotiated several changes in the collective bargaining agreements between the Union and Respondents, including health coverage, reopener and no strike-no lockout clauses. An agreement reached between the parties was reflected in an agreement signed on February 27, 2004 by Kevin Breslin on behalf of Healthbridge/Care Realty and the six facilities involved herein.

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[2] There was a seventh facility in Darien, Connecticut involved at the time. This facility has since closed.

[3] The parties have stipulated that although these two letters were signed by Breslin, a representative of Healthbridge Management Company, Inc., and not Respondent Healthbridge, that these two letters are binding on each of Respondent Healthbridge and Respondent Health Care Centers and constitute agreements by each of Respondent Healthbridge and Respondent Health Care Centers as if made directly by them.

As noted above, the parties entered into collective bargaining agreements, which were effective from December 31, 2004 through March 16, 2011. These contracts were each signed by Breslin as executive vice-president of Respondent Healthbridge and as an agent for and on behalf of each of the respective facilities.

D. Subcontracting of Housekeeping and Laundry Services to Healthcare Services Group, Inc.

Healthcare Services Group, Inc. (HSG) provides housekeeping and laundry services to nursing homes in multiple states. HSG has two types of agreements with nursing homes. The first is a more common, and a type of agreement preferred by HSG since it is more lucrative for it, is a "full service" agreement. There, HSG employs all of the employees, plus supplying an on-site supervisor (known as an account manager) as well as providing linens and certain supplies. Another less common type of arrangement is a "supervisor only" contract, wherein HSG does not employ any employees of the facility but provides specified materials and supplies and an account manager to supervise employees on-site.

On various dates in 2006, HSG entered into "supervisory only" contracts with all six of the facilities involved here. These contracts were all signed on behalf of the individual homes by Kevin Breslin, executive vice-president "of Healthbridge Management, Inc. Its Management Agent."

From 2006 through early 2009, these services were provided to all six facilities. During this period of time, all unit employees continued to be on the payroll of the individual homes and were covered by the collective bargaining agreement between the homes and the Union. However, the employees were directly supervised by the account managers of HSG at each facility. The account managers handled scheduling, minor disciplinary matters and had some involvement in initial steps in the grievance procedure. However, Steps 2 and beyond of the grievance procedure were handled by the homes' administrators as well as by Respondent Healthbridge representatives.

On February 15, 2009, Respondents Newington, Long Ridge and Westport subcontracted their entire housekeeping and laundry departments to HSG by entering into "full service" contracts for these facilities.

On February 5, 2009, Remillard sent identical letters to the Union on behalf of each facility, signed as regional resource manager. The letters read as follows:

Newington Health Care Center

February 5, 2009

Chris Wishart
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Newington Health Care Center, notice of intent to subcontract Bargaining Unit Work

Dear Chris:

I am writing to inform you, that it is the intent of Newington Health Care Center to subcontract Bargaining Unit Work within the Housekeeping and Laundry departments with Healthcare Services Group (HCSG), Inc.

Effect Sunday February 15, 2009 HCSG will be assuming the day to day operations (including staffing) of these departments and agrees in advance to retain the employees and recognize all their rights, including seniority, under the current Collective Bargaining Agreement.

HCSG will be in contact with you regarding their transition plan. We look forward to your cooperation during this transition period.

Sincerely,
Ed Remillard
Regional Human Resources Manager

Cc: Christine M. McKinney, Administrator
Phil Quillard, Senior Vice President
Lisa Crutchfield, V. P. Human Resources
Mary Grabell, Regional Director of Operations
John Pliego, Healthcare Services Group

The very next day, February 6, 2009, Stuart Fishberg, HSG's regional manager, sent a letter to the Union notifying it that as of February 15, 2009, the housekeeping and laundry employees at each of the three facilities will be transferred to the payroll of HSG and that, thereafter, all accrued benefits, seniority and job status will be intact and that HSG will agree to all terms and conditions of the contract between the Union and the facilities. The letter is as follows:

Healthcare Services, Group, Inc.

February 6, 2009

Mr. Christopher Wishart, Organizer
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

Dear Mr. Wishart;

Please accept this letter as notification that effective February 15, 2009, the Housekeeping and Laundry employees at Newington Health Care Center will be transferred to the payroll of Healthcare Services Group.

Healthcare Services Group will transfer all employees to our payroll with their seniority dates, accrued benefits, and job status intact. HCSG will make all contributions to specified Union funds based on earnings from February 15, 2009 and forward. HCSG also agrees to all terms and conditions negotiated and agreed to between Local 1199 and Newington Health Care Center.

This change will have no impact on the employees' wages or benefits. An informational meeting is scheduled on February 6, 2009 at 1:30pm. Should you have any questions or concerns, please feel free to contact me at 800-622-6010, or you are invited to attend the informational meeting.

Sincerely,
Stuart Fishberg
Regional Manager

Notified Via Fax 860-251-6049

The employees at these facilities were not informed that they had been terminated or laid off from their employment at the homes, only that they were being transferred to HSG's payroll. They were not interviewed for employment by anyone at HSG, did not fill out any job applications for HSG and HSG did not conduct reference checks as it normally does when it hires new employees. In fact, as is made clear from the letters to the Union, described above, Respondents required HSG to both hire all the housekeeping and laundry employees at each of the three centers and to agree to apply the terms of the collective bargaining agreement to the employees while they were employed by HSG.

When the employees of the facilities were transferred to the payroll of and "hired" by HSG, they did fill out some paperwork, including I-9 forms, W-4 forms, enrollment forms for HSG's health plans, an authorization for HSG to conduct a background check and submitted copies of investigation, including from consumer reporting agencies,[4] their social security cards and driver's licenses. A personnel file was created for each employee at each home by HSG's account manager. The top document in that file is entitled, "HSG New Hire Form." It is filled out by the account manager and not the employee and included the employee's name, name of the facility, states date of hire as 2/15/09, then date of birth, address, rate of pay, martial status, and number of exemptions. These personnel files were maintained by HSG and were kept locked in the HSG account manager's office. The files were not shared with the centers and the centers' administrators did not put any documents into these files nor give HSG any documents to put into HSG's personnel files.

During the years prior to February of 2009, when HSG provided only supervisory functions at all of Respondents' facilities, HSG did not maintain personnel files for the employees. Although, HSG account managers were involved in disciplining employees and would issue counseling and written warnings to employees, these documents would be written on forms provided by the various facilities and after being prepared by HSG account managers, the forms would be placed in the employees' personnel files maintained by the centers.

When HSG district managers assembled the HSG personnel files, they did have access to the personnel files of the employees from the respective centers and used them to help prepare some of the documents in the HSG files.

While the employees were employed by HSG at each of these facilities,[5] various items

[4] No evidence was presented that, in fact, HSG conducted any such investigations or background checks on any new employee. In fact, Tom Glaser, the HGS account manager at Respondent Westport testified that HSG did not conduct any reference checks for any of the employees that it hired.

[5] As will be detailed more fully below, employees at these facilities were terminated by HSG

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were placed into the HSG personnel files of these employees by the HSG account officials. They included disciplinary notices, notices of change of job status, changes of shifts, workman's compensation claims, doctor's notes, leave of absence requests, employee incident reports, in-services, or time-off and vacation requests of employees.

After the transition to "full service" when the account manager at the Respondent's three facilities wrote up employees for discipline or processed vacation or time-off requests, they used the forms previously used for these purposes, which were provided by the respective centers.[6] However, while in the pre- and post-transition periods, these forms were sent to the homes' personnel files as was done with respect to these items during the full service period.

The HSG personnel file for employee Florian includes a letter from Klimas, the administrator of Respondent Long Ridge, dated May 17, 2010, offering her employment at Respondent Long Ridge at a salary of $12.80 per hour. According to Owusu, he placed this document into Florian's HSG personnel file because it was given to him by Florian and that he did not receive it from Klimas. Owusu explained that Florian asked him to put the document into her HSG personnel file, and he complied with that request. He did not explain why he did so in view of the fact that Florian was no longer an HSG employee at the time, and he apparently no longer used to update these personnel files after the employees were terminated by HSG and rehired by Respondent Long Ridge.

Additionally, the record also discloses that an examination of the personnel files at these three facilities reveals several other documents covering events that occurred in 2010, after the employees were rehired by the respective centers. Apparently, HSG retained these personnel files in the office at the facilities, and, in some instances, the account manger would place certain documents with respect to employees in these files. No testimony was offered by any of the account managers as to why they would continue to place items into these files of these employees after their rehire by the facilities.

Additionally, the files at Respondent Newington contained documents for employees, detailing events and incidents that occurred in 2008, well prior to HSG becoming a full service contractor. No explanations were offered by HSG representatives as to why these documents were included in the HSG personnel files, which were not started until HSG began its full service operations in February of 2009.

These personnel files at Respondent Westport (but not the other two facilities) contained a document entitled, "Employee New Hire Forms and a Checklist for Account Managers." This document contained various items to be checked off by account managers. These items included the required I-9 forms, social security verification, copy of job description, completion of in-service training and number 9, which reads, "Signed employee receipt for Employee Handbook – place copy in personnel file and give Handbook to employee." This number 9 was not filled out in any of the files for any of Respondent Westport's employees. In most cases, a line was written through the page, in which the employee is supposed to sign for receipt of the manual. In the form for employee Debbie Baldwin, a cross out also appears on the page referring to the employee handbook. The words on the acknowledgement, which employees are apparently required to sign as HSG employees, reads as follows: "By signing below, I acknowledge that I have received a copy of the Healthcare Employee Handbook and that it is

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on May 17, 2010.

[6] See, for example, employee Yolette Florian's disciplinary notice issued at Respondent Long Ridge on 3/12/09 by Richard Aguilar, HSG's account manager at the time.

my responsibility to read and comply with the policies contained in the Handbook. I understand that if I have any questions about anything in this Handbook, I should direct them to my supervisor." Significantly, on the bottom of this page, the following words were written, "Union contract."[7]

The files at Respondent Long Ridge contained documents entitled, "Hourly Employee Evaluation Forms" for 10 of the 15 HSG laundry and housekeeping employees employed at that facility. These forms were filled out by Account Manager William Owusu between March 12 and April 14, 2010. According to Owusu, these forms appeared on his desk, and he was instructed by Mike Crane, Owusu's supervisory and HSG's district manger that the "evaluations were due." Owusu was not sure if these forms were HSG forms or Long Ridge forms. The forms themselves do no make clear which entity prepared the forms. No name of HSG or Long Ridge or Healthbridge appears on the printed portions of the document. Under the section of the form entitled "facility," the following appears: "Healthcare Services Group Long Ridge of Stamford." The form details various categories, such as skills, knowledge, quality, productivity, teamwork, dependability and customer services, and includes various descriptions of these categories, calling for scores from 1-4 in each area. The scores are totaled and there is also a space for comments. There is a section on the form stating, "I do or do not recommend the employee for an increase." This section was not filled out on any of the forms.

In fact, according to Crane, HSG routinely uses these forms for all its employees, but they are not used for wage increases or discipline. The purpose of the forms is to let the employees know how they were performing and communicate with them and have an opportunity for feedback from them. Crane testified further that these forms are supposed to be filled out yearly for all HSG employees at all facilities that it supervises or when it employs the employees. However, no such evaluation forms were included in the personnel files in Respondent Westport and Respondent Newington.

Prior to becoming HSG employees, the housekeeping and laundry employees at the three facilities punched in and out using their respective center's time clock. Once HSG became a "full service" contractor in February of 2009, HSG installed its own separate time clock, which these employees used during the period of time of their employment with HSG. Hours of employees were completed and calculated for HSG payroll confirmation sheets from HSG timecards and sent to HSG payroll department for processing and payment.

The number of hours worked for the employees was determined by HSG and was implemented by the account managers at each facility.

Glaser, the account manager for Respondent Westport, testified that during the full service period at that facility, he hired one per diem employee on behalf of HSG when an employee went out on medical leave. At first, Glaser posted for the position outside of his office so that if anyone from the home was interested in the position, they could apply. No one from the center applied, so Glaser then obtained applications that the center had and picked out an applicant and called him in for an interview. Glaser interviewed the applicant, who had not been a previous employee of Respondent Westport, received approval from his supervisor, Chris Ricci, and hired the employee as a per diem worker for HSG. Glaser did not discuss the hire with anyone from Respondent Westport.

[7] The record does not reflect who wrote the works "Union contact," but I suspect that it was Baldwin herself, who was a union delegate.

Glaser did not testify as to the name of this individual, but an examination of the Respondent Westport's personnel files reveals only one totally new hire, that of Marvin Williams on September 1, 2009. Glaser's testimony did confirm that he hired someone to fill this vacant position as a per diem employee and that this individual was not a former employee of the facility. Williams appears to meet those criteria since he (unlike the other HSG employees hired) filled out a job application and listed his prior employment. Interestingly, Williams is the only HSG employee hired at any of the facilities, who filled out and signed the employee handbook receipt, apparently signifying that he, unlike the other employees hired by HSG, received an HSG handbook.

Will Parkmond, the account manager for HSG at the Respondent Newington facility, testified that he had an opening for a temporary housekeeper position in June of 2009. On June 7, 2009, Parkmond used a Respondent Newington form and posted for the opening in the employee breakroom, where postings are posted for anyone at the center to apply. Ultimately, Parkmond gave the position to a per diem employee from within the housekeeping and laundry department. He did not testify whether any employees from other departments, who were employees of the home, applied for that position.

During the "full service" period, it is undisputed that HSG followed the union contract with respect to the laundry and housekeeping employees as it had been instructed to do by Respondents. Union dues were deducted from the salaries of employees and forwarded to the Union. Contractual seniority, wages, vacations and other provisions were utilized by HSG during this period in nearly every area. Indeed, from the perspective of the laundry and housekeeping employees, there were virtually no changes other than in payroll and punching in from prior to the change to the "full service" contracting.

The only other changes were that the employees had direct deposit of their checks when they were employees of the centers.[8] HSG did not provide this service, and some employees made complaints about this to HSG account managers. They were informed that HSG was looking into obtaining this service for the employees. HSG never provided direct deposit for its employees at these three facilities involved. This required paychecks to be passed out to the employees. In that regard, HSG would often leave the check with the receptionist at the centers, and the employees would sign a sheet left by the account manager to acknowledge their receipt of their checks.

Additionally, although HSG had agreed to apply the contractual benefits to the laundry and housekeeping employees at these three facilities, it had different health plans than did the centers. However, it agreed to provide equivalent benefits. Thus, although HSG's plans had the same benefits, there were some differences in co-pays for doctors and prescriptions. HSG reimbursed the employees for the differences in these co-pays from what they had been paying at the three centers.

HSG also continued to follow the contractual grievance procedure. The procedure involves three steps. Step 1 is the account manager. This was the same before and after the "full service" change since, as noted, HSG had been supervising the employees since 2006. Step 2, however, was the administrator of the facility prior to February of 2009. After February of 2009, Step 2 became the HSG district manager at the respective facilities. Step 3, prior to February of 2009, was Remilard, the human resources director for Respondents, while Step 3 subsequent to February 12, 2009, was Stu Fishberg, regional manager of HSG.

[8] This benefit was not set forth in the contracts.

In actual practice, there were very few grievances filed at any of the three facilities, but there was some evidence adduced with respect to several of the specific grievances, which General Counsel asserts, demonstrates joint employer status of the laundry and housekeeping employees.

Franz Petion was employed by Respondent Westport since 1998. He worked in the dietary department from 1998 to 2004 when he transferred to housekeeping. In February of 2009, Petion learned that the housekeeping department at Respondent Westport was going to cut back on hours starting in April. At about that time, Respondent Westport posted for a position in dietary (where Petion had previously worked). He decided to apply for this position. On February 12, 2009, he submitted a written request to Respondent Westport's kitchen supervisor to transfer him back to dietary. His request states that he has "seniority and qualifications for that position. I was hired 6/23/98." Petion gave the request to Simmons, but they had no conversation about it. Subsequently, the position was awarded to someone else, and Petion filed a grievance. The grievance was filed on February 25, 2009. At that time, Petion had been transferred to HSG's payroll and was an HSG employee. Nonetheless, the grievance was filed with and processed through Respondent Westport. The Step 1 grievance was answered by Simmons, who stated that it is the position of the center that the contract was not violated.

On March 18, 2009, Petion met with Kimberly Coleman, administrator of Respondent Westport, and Emily Jones, union organizer. Glaser, HSG's account manager, was not present at this grievance meeting.

Coleman denied the grievance in writing on March 29, 2009, stating the "center did not violate the union contract when it denied Franst's [sic] request to transfer from housekeeping/laundry to dietary. The position was filled by another employee who had more seniority than Franst[sic]."

On April 21, 2009, the parties met for a Step 3 meeting. Present were Remillard, Coleman, Jones, Petion, a union delegate (Leone Spence) and a witness. Neither Glasner nor any representative from HSG was present at this meeting. Remillard issued a decision on April 23, 2009, stating that based "upon the information by the Union at the Step 3 hearing, I have determined that Mr. Petion possessed greater seniority and experience than Mr. Desvallon." Therefore, Remillard granted the Union's grievance, and Petion was transferred to the dietary department on May 23, 2009.

After Petion won the grievance but before the transfer was effectuated, Coleman informed Petion that when he is transferred to dietary, his pay rate would be cut to $12.80 per hour from $15.65. Apparently, Coleman gave no explanation to Petion as to why his pay was going to be reduced. Petion told her that she cannot do that and that he was going to call the Union. Instead, Petion called Remillard and complained about Coleman's decision to cut his pay. Remillard overruled Coleman, and Petion's pay was not reduced. He continued to work for Respondent Westport as a dietary aide.

Coleman did not testify, so no explanation was provided as to why she informed Petion that his rate was to be cut to $12.80 when he transferred to dietary as a result of the grievance being sustained. It is noteworthy that the $12.80 rate that Coleman sought to reduce Petion to was the identical rate that the laundry and housekeeping employees received as new hires in May 23, 2010, as will be detailed more fully below.

Claudette Parks-Hill has worked in various capacities at the Long Ridge facility since 2005. She started out as a dietary aide and then switched to housekeeping. She was terminated from her full-time position in housekeeping in 2007, the Union grieved and an arbitrator offered her reinstatement. In 2008, she had been reinstated to her full-time position in housekeeping for Respondent Long Ridge and began to pick up come hours in the nursing department as a per diem CNA.

When HSG became the employer of the laundry and housekeeping employees on February 15, 2009, Parks-Hill was hired as a part-time employee in housekeeping. At that time, she began receiving two pay checks. One for her regular part-time hours at HSG and the other from Respondent Westport for the hours that she received a per diem CNA.

In April of 2009, HSG laid off Parks-Hill (among others), and she lost her regular hours as a part-time employee for HSG. She, however, remained an employee of HSG as a per diem in the housekeeping department. Union representative Patrick Atkinson met with Mike Crane, HSG's district manager, to discuss Parks-Hill's layoff. He did not, at that time, discuss the possibility of Parks-Hill bumping into nursing because, according to Atkinson, Crane "has nothing to do with nursing."

Subsequently, Parks-Hill went to ask Atkinson about bumping into the nursing department. They initially discussed the issue with Anna Durkovic, the administrator for Respondent Long Ridge. Atkinson requested that Parks-Hill be allowed to bump into the nursing department to obtain regular hours as a CNA. Durkovic said no, that Parks-Hill could not bump into nursing. Thereafter, the Union filed a grievance, and Atkinson along with Union representative Anne --- told Durkovic during this meeting that Parks-Hill should be allowed to bump from housekeeping into nursing and that Respondent Long Ridge would be in violation of the contract if it did not allow Parks-Hill to bump. Anne referred to Article 8, the seniority clause in the contract. Durkovic replied at the meeting that she would get back to the Union on the matter. Shortly after that meeting, Durkovic notified Atkinson that Parks-Hill will be allowed to bump into the nursing department, and she should see Joyce Ricci, Respondent Long Ridge's scheduler about the hours. She did so, and Ricci initially told her that the schedule was made-up but that Parks-Hill would be on the schedule the next month. At one point, Ricci told Parks-Hill that she would be regularly scheduled for 8 hours. Subsequently, Parks-Hill's hours steadily increased up to nearly 40 hours.[9]

During the spring and summer of 2009, Parks-Hill continued her status as a per diem employee at HSG in housekeeping and received some hours from time to time from HSG at the same time that she was receiving hours from Respondent Long Ridge as a CNA in nursing. In September of 2009, Parks-Hill as well as other nursing employees received a notice of layoff due to current census and federal reduction of medical/Medicare reimbursement. The notice states that this "layoff is not temporary." On September 23, 2009, Parks-Hill met with Respondent Long Ridge's Administrator Durkovic, Agnes Mirto, director of nursing, and Crane, district manager for HSG. Atkinson, the union delegate, was also present. At that time, the layoff was explained to her, and she was given a document to sign entitled, "Long Ridge of Stamford Layoff Effective September 20, 2009." The document contains Parks-Hill's name, lists her status as CNA 8 hours and has a box checked off for termination letter, which was checked off. Parks-

[9] It appears that she was regularly scheduled for the eight hours but picked up additional hours as needed. As will be discussed below in connection with another issue, Respondent's centers had a practice wherein they would guarantee a certain amount of hours to employees, known as "control" hours. This is apparently what Parks-Hill received in the spring of 2009.

Hill signed the document and added the following comments, “No other positions were offer to me. CP Hill 9/23/09.” Also, on this document, there is a listing of the average hours worked by Parks-Hill in both laundry and nursing. According to Parks-Hill, these notations were made by Mirto, and the information with regard to her hours worked in laundry was obtained from Crane at the meeting. Apparently, this information was included to assist Parks-Hill in filing for unemployment. The document reflected that Parks-Hill worked no hours in laundry for the weeks of 8/29, 9/12 and 9/19/09 and 8 hours for the week of 9/5/09. It also stated that in August 2009, she averaged 11.5 hours and in July of 2009 averaged 11.25 hours. Although these hours were as an HSG employee, it is noteworthy that the form did not mention HSG at all nor reflect that these hours were as an HSG employee. The form also stated that Parks-Hill had averaged 27 hours in nursing from September 2009 to present and 41 hours in August and 33.625 hours in July. According to Parks-Hill, she believed that at that meeting that she was being laid off “from the building” and that she would also no longer be a per diem employee of HSG. Neither Crane nor anyone else at the meeting informed Parks-Hill that she would still be an employee of HSG notwithstanding the layoff notice from Respondent Long Ridge.

During this meeting, Atkinson stated that in his view Parks-Hill should be allowed to bump back into housekeeping and that the contract states that her seniority continues. Durkovic responded that she did not believe that Parks-Hill could bump into housekeeping. Crane, although present, made no comment about this subject.

Subsequent to this meeting, Atkinson met with Durkovic and Crane and again requested that Parks-Hill be allowed to bump back into housekeeping. According to Atkinson, both Crane and Durkovic stated that they would not allow Parks-Hill to bump back into housekeeping. Atkinson asked why the home wouldn’t allow her to bump back into housekeeping when it had previously allowed her to bump from housekeeping to nursing. Neither Durkovic not Carne responded to Atkinson’s inquiry.

After the September 23 meeting, as noted above, Parks-Hill believed that she had been terminated by both HSG and Respondent Long Ridge, and, in fact, she received no calls from HSG for jobs in 2009. She was, at some point undisclosed by the record, subsequently informed in a letter from unemployment insurance that she had not been laid off from HSG but that it simply had no work for her. Apparently, Parks-Hill did receive unemployment insurance based upon her layoff from Respondent Long Ridge.

She still did not receive any calls for work from HSG but since she had a baby in December of 2009, it was not an issue, and she was not available for work in any event. In March of 2010, she called HSG and notified HSG that she was now available for work and did start to receive some calls from HSG for per diem work.

After the May termination by HSG, she was rehired by Respondent Long Ridge as a per diem housekeeping employee and received some hours. In July, Respondent Long Ridge offered her a full-time position as a CNA in the nursing department, which she accepted.

Anthony Lecky was employed by Respondent Long Ridge for 16 years as an employee in housekeeping and laundry. Prior to the transfer of Respondent’s Long Ridge’s laundry and housekeeping employees to HSG’s payroll, Lecky was employed in the laundry department. Lecky had been a union delegate for 6 years. As a union delegate, he along with all of the other delegates represented all employees in the bargaining unit, and it was not unusual for an employee in one department to be represented by a delegate employed in a different department. Thus, Lecky has represented employees in his capacity as union delegate, who work in departments other than laundry and housekeeping. In the fall of 2009, Lecky stayed

after his shift ended to attend a grievance meeting. He was not paid for his time spent at the grievance meeting. In the past, employees had always been paid for time spent at grievance meetings at Respondent Long Ridge.

When Lecky noticed that he had not been paid for the time, he complained to fellow delegate Atkinson. Atkinson and Lecky spoke to Durkovic together about the issue. No one from HSG was present. Atkinson and Lecky explained the situation to Durkovic. She told them that this was "her building" and "if there were changes, she needs to know." She told Atkinson and Lecky that she would look into the matter and get back to them.

Atkinson testified that he approached Owusu about the issue, and according to Atkinson, Owusu replied that "Chris from corporate" instructed him not to pay Lecky. Although Atkinson testified that he believed that Chris was an employee of Respondent Healthbridge, but he conceded that he never met Chris and did not know Chris's last name. Atkinson did assert that a payroll employee named Cassandra,[10] whom he had dealt with in the past on payroll, informed him that Chris had instructed her not to pay employees for hours for whatever reason. Cassandra allegedly told Atkinson that "Chris" was an employee of Healthbridge. There is no other record evidence that Respondent Healthbridge employs any corporate official named "Chris." The record does disclose, however, that Respondent HSG employed a Chris Ricci as a district manager.

Subsequent to the conversation between Atkinson, Lecky and Durkovic about Lecky's complaint, Atkinson approached Crane. Atkinson told Crane that Lecky had not been pad for his time that he spent in a union grievance meeting. Crane informed Atkinson that HSG was not going to pay Lecky for that time. Atkinson did not testify whether or not Crane provided him a reason for why HSG did not pay Lecky.

Both Crane and Owusu testified that Crane instructed Owusu not to pay Lecky for this time because Lecky's grievance meeting did not involve HSG business or HSG employees but involved other union matters involving other employees of the facility.

Although Durkovic had promised Atkinson and Lecky that she would look into Lecky's complaint and get back to them, she never did. Accordingly, on September 17, 2009, Atkinson prepared a grievance on the issue, which was also signed by Lecky. The union grievance form under the section facility lists HCS, which stands for Healthcare Service (HSG). However, Lecky and Atkinson met with Durkovic and handed this grievance to her. She accepted it and informed Atkinson and Lecky that she was "still looking into it," Durkovic never got back to Lecky or Atkinson about the issue or the grievance.

Atkinson subsequently contacted Anne ---[11] about it, and she told him that as soon as he received a response to the grievance, he should let her know.

Neither Atkinson nor the Union ever received a response to the grievance from either HSG, Respondent Long Ridge or Respondent Healthbridge.[12]

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[10] Atkinson did not testify whether "Cassandra" is an employee of Respondent's Long Ridge or of Respondent Healthbridge.

[11] While Atkinson did not recall the last name of the union representative, other record evidence reflects that the union organizer for the facility was Anne Fenelon.

[12] I note the record does not reflect whether HSG ever received a copy of this grievance, which, as noted, was given by Atkinson to Durkovic.

Victor Rodriguez was a per diem housekeeping employee employed at Respondent Newington. He was transferred over to HSG's payroll and hired by HSG in February of 2009 along with Respondent Newington's other laundry and housekeeping employees.

On February 27, 2009, Sue Simone, a union delegate and a laundry employee, filed a grievance on behalf of Rodriguez with Respondent Newington. She met with Respondent Newington's administrator Chris McKinney with respect to this grievance although Rodriguez was an HSG employee as of February 27, 2009. McKinney answered and denied the grievance in writing. The grievance alleged that Respondent Newington had violated the contract by not permitting Rodriguez to transfer to the maintenance department. The maintenance department is not part of the laundry and housekeeping unit, and the maintenance department employees were not employees of HSG. That is why Simone filed the grievance with the administrator and did not speak with anyone from HSG about Rodriguez's complaint.

In fact, it turns out that this position had been posted in July 2008, and Rodriguez did not apply for it. It was apparently given to a per diem employee from the maintenance department. Rodriguez was complaining that this employee was receiving 32-40 hours, which McKinney denied in her response.

Simone conceded that she had previous conversations with Lewis --, the supervisor of the maintenance department and an employee of Respondent Newington about getting Rodriguez some hours as a maintenance employee as far back as 2008 and had not been successful.

After this grievance was denied by Respondent Newington by the administrator, it was not taken any further by the Union.

On July 16, 2009, Simone filed a grievance on behalf of Michael Cockburn, a laundry and housekeeping employee, concerning the failure of Respondent Newington to award him a posted position in the maintenance department. She met with McKinney about the grievance and discussed it. McKinney responded in writing on August 4, 2009 that the grievant Cockburn had been rehired by Respondent Newington on October 23, 2008 and that the employee, who received the posted position, Miguel Colon, who was in the maintenance department, was hired on October 21, 2008. Therefore, when the 8 hours per week maintenance position became available and was posted, Colon had more seniority and was awarded the position based on more seniority and following "past practice and union contract rules in regards to the proper employee bidding for the position."

Debbie Baldwin was a laundry employee and a union delegate employed by Respondent Newington. Eva Fal was also a union delegate but was employed as a dietary aide at Respondent Newington. Baldwin became an HSG employee after the "full service" phase of Respondent Newington's relationship with HSG began in February of 2009.

As union delegate, Baldwin continued to represent the housekeeping and laundry employees employed at Respondent Newington's facility, even after she became an HSG employee. In this capacity, during the "full service" period, she several times raised the direct deposit issue with Will Parkmond, HSG's account manager. Parkmond informed Simone that HSG did not offer direct deposit to its employees.[13]

[13] As noted above, the employees at Respondent Newington as well as the other facilities

Continued

Additionally, both Simone and Fal filed a number of grievances during the full service period, which were ultimately handled by Parkmond on behalf of HSG. However, Fal and Baldwin would not file them with HSG but would give them to Respondent Newington's administrator McKinney. McKinney, in turn, would put the grievances into Parkmond's box, and he would handle them. Parkmond also testified that he told both Simone and Fal several times that the grievances concerning HSG during this time period should be filed with him and HSG and not the home.

At one point in his testimony, Parkmond conceded that he had some discussions about the substance of these grievances themselves with McKinney. At another point in his testimony, he denied that he discussed the substance of the grievances with McKinney, but only that they discussed that the grievances should have been filed directly with HSG.[14]

The particular grievances involved are as follows. A grievance was filed by Fal on behalf of housekeeping employee Francisco Hernandez for loss of wages on March 20, 2009. Parkmond received this grievance directly from Fal. The grievance was filed on a union grievance form and lists the facility as "Newington." The grievance does not mention HSG. Parkmond responded in writing to this grievance and testified that neither the administrator nor anyone else from HSG was involved in resolving this grievance. The issue involved was that Hernandez lost pay when he was taken off the payroll because after he was hired by HSG on February 15, 2009, HSG discovered that Hernandez and another housekeeping employee had social security numbers that could not be confirmed. According to Parkmond, he discussed this grievance with Rich Dunn, his district manager and supervisor, who confirmed HSG's policy that the employees must be taken off until their social security numbers are confirmed. Hernandez was given time to correct the situation, but he did not do so, and so he was taken off the schedule and then off the payroll entirely, pursuant to HSG policy. Ultimately, Hernandez returned to Puerto Rico, straightened out the problem and obtained a correct social security number. He was then reinstated to the payroll.

Parkmond's response to the grievance was filed on March 24, 2009, and essentially described the above facts and concluded that Hernandez was given ample time to attain confirmation of this social security number just as the other employee was. "All actions were taken according to policy."

The Union did not take this grievance any further and filed no further steps in the process.

On March 23, 2009, Fal filed a grievance on behalf of employees alleging that "new insurance policy differs from previous benefits." Parkmond received a copy of this grievance in his box from McKinney with whom Fal had filed the document. On the top left hand corner of the document, the words "for Will Parkmond" appear, written by McKinney. The grievance filed by Fal was again filed on union grievance form, listing facility as "Newington" and made no mention of HSG. The remedy requested was "correct all benefits to previous ins." This grievance refers to the fact, as detailed above, that HSG agreed to reimburse the laundry and housekeeping employees for any differences in co-pays for prescriptions or doctors' visits from what they had to pay while on the payroll of the Respondent Centers, including Respondent Newington. According to Parkmond, he resolved this grievance by contacting HSG's benefits coordinator

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involved herein had received direct deposit while they were employed by the centers.

[14] McKinney did not testify.

and sending a note to the coordinator reflecting that employee Luz Maria Morales "had been charged a fee also for prescriptions" and instructing the coordinator to "check all new benefits to match old benefits for employees." Parkmond also included in his submission to the coordinator a copy of a receipt reflecting that employee Chinette Brown had paid a co-pay to Express Scripts and a copy of Brown's Blue Cross Blue Shield card.

Parkmond responded to this grievance in writing on March 26, 2009. The response states that "there have been some concerns brought to my attention in reference to the present coverage from previous benefits, I have made my benefits coordinator aware and we have been taking steps toward rectifying these issues."

Parkmond asserts that he had no discussions about this grievance with the administrator or anyone else from Respondent Newington. This grievance was not taken by the Union any further.

On August 17, 2009, Fal, Simone and several laundry and housekeeping employees filed a grievance alleging that "facility refuses to acknowledge the union contract for housekeeping/laundry." Parkmond responded in writing to this grievance on August 20, 2009, as follows:

> The union is acknowledged by facility & Healthcare Services Group Inc. Union contract being followed. All further grievances should be addressed to Healthcare Services, not administrator of NHCC as of 2/15/09. Step 1 Will Parkmond, HCSG; Step 2 Rich Dunn HCSG; Step 3 Stu Fishberg HCSG.

According to Parkmond, he did not discuss this grievance with the administrator or with anyone from HSG. He prepared the above cited response himself. Parkmond also testified that he discussed the grievance with Simone, but doesn't recall what specifically the delegates were complaining about or who from the home or from HSG had allegedly refused to "acknowledge the union contract for housekeeping and laundry employees." The Union never took the grievance any further.

On January 29, 2010, Fal filed a grievance also signed by several employees alleging that "employees are being charged for insurance, long-term, vision, etc. Double charges." Parkmond responded to this grievance on February 3, 2010, as follows:

> 2/3/10
>
> Answer to Greivance[sic] from 1199 dated 1/29/10
>
> Re: Payroll Deductions: disability, long/short, vision coverage, double charges.
>
> New payroll system in effect. Hcsg is working out some discrepancies in checks with insurance, vision, long and short term disability deductions. Hcsg will remedy these issues.
>
> Will Parkmond
> Acc. Manager
> HCSG

Parkmond explained that this grievance involved HSG's commitment to honor the contract's provision so that employees will not have to pay any higher premiums for health

insurance, including the related benefits such as vision and disability than they had paid while on the payroll of Respondent Newington. Apparently, there had been a payroll glitch so that employees were charged more than they should have for premiums for a period of a couple of weeks. His explanation in his response that HSG is taking care of the discrepancies and will remedy the issues apparently satisfied the Union, and no further action by the Union concerning this grievance. Parkmond did not discuss this grievance with anyone from Respondent Newington.

After the housekeeping and laundry employees were transferred to HSG's payroll at the three centers on February 15, 2009, issues arose about the amount of leave time the employees carried with them to HSG and accrued while working for HSG. Since HSG assumed the union contracts at that time, it accepted the liability for time accrued before February 15, 2009. The employees' accrued time during the remainder of the year (while employed by HSG) were based on their accruals prior to February 15 (while employed by the centers). HSG used figures provided by the centers and Healthbridge to determine the amount of time employees had accrued prior to that date. During the "full service" period, there were numerous instances of problems that arose, where employees complained that they were not receiving the proper benefits based on these prior accruals. In this regard, employees would complain to HSG account managers as well as to the center administrators about these issues. HSG managers would attempt to resolve these issues and would often have to consult with representatives of the centers and to obtain centers' records in order to do so.

Suzanne Clark was a union organizer, who became assigned to service the Respondent Centers in July of 2009, when Emily Jones, the prior union organizer for these facilities, left the Union. Clark became involved in these issues. She received complaints from housekeepers that they had not received the proper amount of time after the transfer to HSG, that they had tried to resolve it themselves with Kim Coleman, the administrator at Respondent Westport, and had not been successful, and there were still more errors.

Clark discussed the issues with both officials of HSG and Coleman. HSG representatives told Clark that HSG had used the information given them from Respondent Westport to make the calculations. Clark then made an information request to Respondent Westport in November of 2009 for information pertaining to accrued time for the laundry and housekeeping employees. Coleman responded to that request on November 10, 2009 with a copy of the accrual records for the twelve Respondent Westport employees, who had been transferred to HSG' payroll.[15]

Clark also received a complaint in late April of 2010 from Lecky about supervisors doing bargaining unit work at Respondent Long Ridge. In this connection, Clark met with Owusu and Crane about the issue. Apparently, a survey had been conducted by someone or some entity, which had shown deficiencies in cleaning at the facilities. In reaction to that survey, HSG used some supervisors to perform bargaining unit clean-up work. When Crane and Owusu explained this to Clark as an explanation for this conduct, Clark responded that it was not acceptable for supervisors to do bargaining unit work and noted that HSG had effectuated layoffs over the last

[15] Similarly, in August of 2010, after the employees were rehired by the Respondent Centers in May of 2010, as will be detailed below, issues also arose concerning accruals for time spent on HSG's payroll. Clark asked Respondent Newington for information about these issues and dealt with Will Parkmond of HSG and Patricia Rodriguez of Respondent Newington. On August 31, 2010, Parkmond forwarded to Clark, the accruals for the department from January 2009 through May of 2010.

few months, and that caused the cleaning not being up to par as a result of the staffing reduction. Crane and Owusu told Clark that this was not under their control that HSG could not put in more staff. Clark replied that this shows that the layoff did not work and that HSG needs to bring back the staff since it "can't bring in somebody else to do our work instead of having us do it." Clark again emphasized that "we need these bodies." Crane and Owusu reiterated that it wasn't under their control and added that they "weren't going to get the approval from Healthbridge to be able to have more people." Clark then said that HSG could not bring in someone else to be able to come and to do this work, and that it would have to deal with overtime for the existing employees. Crane then agreed to not have any supervisors or non-bargaining unit people doing bargaining unit work.

Clark then observed that if Healthbridge was telling HSG that it couldn't get more people that Healthbridge would not like more overtime either and that in Clark's view, overtime was more painful than more people.

Crane repeated that it wasn't something that he had control over, but he was going to make sure that there was going to be no more supervisors doing the work.

In April of 2010, Clark was discussing the accrual issue problems at Respondent Westport with Chris Ricci, HSG's district manager in charge of that facility. Ricci informed Clark that he didn't think that it was going to be a problem because the employees were going to be transferred back to the Westport payroll and that, therefore, the time would go back on the book for the employees when they got transferred back over to Westport. Clark replied that she wanted to make sure that the employees' time is there.

A few days later, Ricci called Clark back and told her that he had misspoke and that the transfer back to Westport was not a set plan and was just something that was a possibility and added that "I shouldn't have said that."[16]

Sue Simone, as noted above, the union delegate at Respondent Newington, discussed with Parkmond the possibility of obtaining direct deposit for the employees, a benefit the employees had received when they were employed by Respondent Newington. Parkmond initially informed Simone that HSG was looking into providing direct deposit for its employees when she first brought up the issue sometime in March of 2009. Subsequently, Simone would go back every month and ask why Parkmond when are employees going to get direct deposit. On these occasions, Parkmond informed Simone that the employees would eventually be going back to Respondent Newington's payroll, so they would be getting direct deposit then. Parkmond did not tell Simone when the employees would be going back to the payroll of Respondent Newington.

Similarly, in early 2010, Crane, HSG's district manager for the Respondent Long Ridge facility, told union delegate Anthony Lecky that maybe the employees would be going back to becoming employees at Long Ridge.[17]

E. The Termination of the Laundry and Housekeeping Employees

[16] Based on the undenied testimony of Clark. Ricci did not testify.

[17] While Crane and Parkmond denied making the above statements to Lecky and Simone respectively, I credit the mutually corroborative testimony of Simone and Lecky in this regard, which is also corroborative of the undenied credited testimony of Clark of Ricci's comments to her, as described above.

by HSG and the Rehire by the Centers.

On May 17, 2010, the laundry and housekeeping employees at the three facilities reported to work as scheduled. They were all called together by HSG's on-site supervisors and five district managers and handed letters of termination by HSG. All the letters were signed by Kevin McCartney, HSG's divisional vice-president. They were virtually identical at all three facilities in that they advised the employees that as of 12:00 or 12:01 a.m. on May 17, 2010, the employees will no longer be employed by HSG. The letters given to the employees at Respondent Newington facility added the following sentence. "Payroll services [will] not be provided for Newington Health Care Center."

The employees at the three facilities were told that they would need to apply for jobs at their respective centers. The employees were then sent to a meeting, where the administrators and/or Respondent Healthbridge representatives held group meetings with employees. They were told that they could apply for jobs at their respective facilities, but they would have to fill out new job applications, be interviewed and be subject to background and drug tests. The employees learned that they would be treated as "new hires" at a starting rate of $12.80 per hour.[18]

Some of the employees, particularly the union delegates were reluctant to file the applications and accept pay cuts and asked to call the Union. Eventually calls were made to Clark, who advised the employees to file and sign the applications "under protest."

Ultimately, all of the 48 laundry and housekeeping employees at the three facilities applied for jobs with the Respondent Centers, except for Lurline Wray, who had been employed by Respondent Long Ridge. The Centers hired 45 of the 47 employees, who applied.[19]

The "interviews" that were conducted, insofar as the record discloses, were non-existent perfunctory or cursory. That is not surprising since nearly all of the employees had previously been employed at the centers before the subcontracting to HSG. For example, when Debbie Baldwin was rehired by Respondent Westport, she met with administrator Kim Coleman. Coleman asked Baldwin to fill out a job application and to sign a paper accepting employment with Respondent Westport. The letter reflects her position and her new salary and that she will be eligible for benefits in accordance with the collective bargaining agreement. After checking with Clark, Baldwin signed the letter of acceptance. Coleman asked Baldwin no questions about experiences or qualifications or any other interview type of questions. Baldwin asked Coleman why Respondent Westport is "doing this to us." Cole replied, "It's not me, it's corporate." Coleman added that Respondent Westport is following the union contract. Baldwin was then instructed to go upstairs for orientation and then to start work.

Sue Simone met with administrator Gary Caserta at Respondent Newington along with Respondent Healthbridge Vice-President Lisa Crutchfield. Simone asked Caserta why did this happen and why did we do all this. Caserta said that he was sorry that it happened, but if she wanted to be employed, she needed to fill out the application and the letter. Crutchfield

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[18] This resulted in pay reductions for nearly all employees, some quite substantial. For example, Debbie Baldwin's pay at Respondent Westport was reduced from $15.70 to $12.80 per hour.

[19] The two employees not rehired were Myrna Harrison and Newton Daye at Respondent Westport. The facts concerning the failure to rehire these employees will be detailed more fully below.

reiterated that if Simone wanted to be employed, she needed to sign the letter of acceptance or if not, she could just leave. Simone signed the letter and the application listing her desired pay as "what I am making" and signing the code of conduct form, adding the words "under duress."

Simone learned that her pay would drop from $19.14 per hour to $12.80 per hour as a result of her being hired as a new employee.

At Respondent Long Ridge, administrator Vinnie Klimas went through the motions of conducting an interview, brief as they were. Union delegate Lecky filled out his job application and after consultation with Clark signed it and added the words "sign under protest" in several places on the application. Lecky gave the application to Klimas. Klimas asked Lecky if he knew how to work with the laundry machine and the dryer. Lecky said yes.[20] Klimas then informed Lecky, "Okay, you are hired. Welcome to Long Ridge of Stamford." Klimas then handed Lecky a previously prepared "offer of employment" letter, which Lecky also signed, adding the words "under protest."

Parks-Hill, during her "interview" with Klimas, was asked if she ever worked in laundry and housekeeping. Parks-Hill replied yes. Klimas asked if she can lift 50 pounds. Parks-Hill replied yes. Klimas stated, "You're hired." Klimas handed her a hiring letter and asked her to sign it. Parks-Hill did so but added the words "under protest" and put her initials next to that comment.

At Respondent Westport, it appears that 5 employees missed their normal workdays on May 17 and 18 as Glaser admitted that he and his managers cleaned the facilities themselves on these two days. Employees attended orientation on May 18 as new hires. Respondents stipulated that the 45 laundry and housekeeping employees employed at the Newington, Long Ridge and Westport facilities, who were terminated at midnight on May 17, 2010 and hired either on Monday, May 17 or Tuesday, May 18 did not receive pay for either one or both of these days.

In addition to the reduction in pay, the "newly hired" employees were classified at all the facilities as "probationary," thereby, affecting eligibility for a number of benefits under the contract, resulting in loss of medical coverage for some employees for some period of time.

Respondents called no witnesses from any of its facilities or from Respondent Healthbridge. It did call various supervisory personnel from HSG, as detailed above, including Parkmond, Glaser, Owusu and Crane. Their testimony was essentially the same in this area. They were all unaware of who made the decision to cancel the subcontract or why that decision was made. They conceded that generally HSG prefers a "full service" contract to a "supervisory only" contract since the former contract generally produces more revenue for HSG. In each instance, the HSG representatives were simply informed by higher ranking HSG officials that HSG was no longer going to employ the employees and instructed them to so inform the employees that they would need to apply for jobs with the centers. Their testimony is slightly different as to what specifically they were told.

Parkmond, the account manager for Respondent Newington, was told by his district manager, Rich Dunn, that the employees were going to be terminated and to give them a termination letter the next day and instruct them to see the administrator. Parkmond asked

[20] Lecky had been employed in the laundry and housekeeping department for 16 years at the center.

Dunn why this was happening. According to Parkmond, Dunn provided some "vague answers," but he did not recall what Dunn stated.

Glaser, the HSG account manger at Respondent Westport, was informed by his district manager, Chris Ricci, of the terminations and that Respondent Westport was going to be hiring them back. Ricci informed Glaser that he (Ricci) was going to be there the next day and that the "payroll is coming back to Healthbridge." Ricci told Glaser that Healthbridge is taking the "payroll back" and "they're going to be their employees." Glaser asked what does that mean. Ricci replied that the employees would be filling out new applications and the center is going to hire them back. Ricci did not tell Glaser at that time whether the employees would be hired as new employees. On May 17, 2010, after the employees were rehired, employees informed Glaser that they were treated as new employees by the center. On that day, Glaser discussed the issue with Ricci, who confirmed that Respondent Westport would be hiring the employees as new employees and they would not be retaining their seniority. Glaser conceded that he was surprised by this development, but he did not ask Ricci why this decision was made nor did he discuss it with Coleman, the administrator.

Owusu, HSG's account manager at Respondent Long Ridge, testified that Crane (his supervisor) informed him to come in early on May 17, 2010 because the employees would no longer be on HSG's payroll. Crane also informed Owusu that the employees would be going to the "payroll of the home."

Crane testified that he was told by his boss, Stu Fishberg, that HSG was terminating the employees and that he (Crane) should report to Respondent Long Ridge to help with the transition back to "Long Ridge of Stamford." Fishberg added that Crane would be receiving a letter to present to the employees on May 17, 2010. Fishberg did not tell Crane who made the decision to terminate the subcontract or to terminate the employees. Nor was he told that the employees would be hired by the center as new employees. According to Crane, he learned on Monday, May 17 that the employees were being hired at lower wages than they had been receiving while employed at HSG and that employees were upset about it.

F. The Failure to Rehire Daye and Harrison by Respondent Westport

Newton Daye worked as a full-time housekeeper at Respondent Westport's facility for 13 years. In February of 2009, he became an employee of HSG as a result of the subcontracting described above. Daye suffered a stroke in 2009 and was out of work on leave of absence for eight months. During that period of time, he received payments from HSG's long-term disability program.

On May 17, 2010, Daye reported for work as scheduled. He discovered that his timecard was missing, and there was a 7:00 a.m. meeting scheduled with the staff.

Chris Ricci was present and informed him that HSG was not going to be his employer anymore and that he should attend a meeting with Coleman. At the meeting, Daye, as well as other employees, received a letter of termination from HSG and were told to fill out an application to apply for a job with Respondent Westport. Coleman also informed the employees that they would be starting at a salary of $12.00 per hour, which resulted in considerable complaints from employees that this was unfair. The employees decided to contact the Union before filling out any applications. Coleman informed the employees that if they were not filling out job applications, they should leave the premises.

The employees left the meeting and tried to contact the Union but were initially

unsuccessful. Daye went back inside the facility and observed Coleman arguing with employee Myrna Harrison and heard her inform Harrison that she needed to leave the building if she was not filling out an application.

Daye asked Coleman to deliver a message for him to another co-worker, Junior Stanley, that he (Daye) was leaving and would come back for him later. Coleman replied that she would pass the message on.

Daye left the premises and went home. At home, he received a call from a co-worker, who informed him that the Union had been contacted and employees should fill out the applications.

Daye then returned to the center and met with Coleman. He filled out a job application form and gave it to her. Coleman asked Daye three questions about residents' rights of which he could remember only two. She asked Daye what he would do if he saw a resident getting abused. Daye replied that he would go and report it to his supervisor. Coleman also asked a question about working together, but the record does not disclose his response. At the close of the meeting, Coleman did not offer Daye a position and told him that she would get back in touch with him. Coleman did not contact Daye. Subsequently, Daye called on several occasions and finally reached her on Friday, May 21. During this conversation, Coleman informed Daye that Respondent Westport was "no longer in need of your services." Daye asked why. Coleman provided no explanation, and the discussion ended.

Myrna Harrison was employed as a housekeeper at the Westport facility for 22 years, including the 14 months as an employee of HSG. When she arrived for work on May 17, 2010, Chris Ricci informed her not to punch in because there would be a meeting with employees in the dining room right off the lobby. At the meeting, Ricci informed the employees that he had received an email message and gave employees a paper stating that they were terminated by HSG. At that point, Ricci left, and Coleman entered.

Coleman told the employees that they were all going to be hired again by Respondent Westport, but they needed to fill out new job applications and would be paid at about $12.00 per hour.[21] Coleman informed the employees that they had to leave the premises if they were not going to fill out job applications. Coleman added that she would "call the cops" if the employees did not leave. At that point, the employees left the premises, went outside, and the employees attempted to contact the Union. Harrison went outside with the employees but then went back inside because she had an Avon package that she wanted to be delivered to an employee, which was in her locker. Harrison asked Coleman if she could go to her locker. Coleman accompanied Harrison to her locker to retrieve the package. While in the lobby, Coleman again told her (Harrison) that she had to leave the building. When Harrison did not immediately leave, Coleman repeated her previous comment that if Harrison did not leave, she would call the police.

Harrison then went outside the building, and by that time, she was told by co-workers that the Union had been reached and instructed employees to fill out job applications. Harrison then went back inside the building, filled out the job application and gave it to Coleman. Coleman did not conduct any kind of interview and did not ask Harrison any questions. Coleman informed Harrison that she was not going to hire Harrison that day. Harrison asked why. Coleman replied that she was sending Harrison home and would get back to her on Tuesday.

[21] Harrison's salary at that time was $16.75

Harrison did not hear from Coleman on Tuesday as promised. Harrison called and left a message, but Coleman did not return her call. Thus, the next day, May 19, 2010, Harrison went to the home and met with Coleman. Harrison was informed at that time by Coleman that Respondent Westport was not hiring her back. Harrison asked why, but Coleman did not furnish any reason or explanation. Harrison asked Coleman for something from Respondent in writing. Coleman instructed her to go to the payroll office, where she could obtain a paper about her employment status. Harrison did so and received the following signed letter, signed by Jeanette Quinteros, payroll coordinator.

May 19, 2010

Re: Myrna Harrison

To Whom It May Concern:

Myrna Harrison is a former employee of Westport Health Care Center with a position as a Housekeeper with a date of time of 12/13/1989. Myrna was terminated on 2/15/2009. If you have any questions or concerns please feel free to contact me at 203-349-4627.

Thank you.

Jeanette Quinteros
Payroll/Benefits Coordinator

Baldwin, the long-term delegate and housekeeper at Respondent Westport, testified that Daye and Harrison were good workers and that she never received any complaints about them as their delegate.

Glaser, as noted, the on-site supervisor for HSG, testified that he had contacts and discussions with Coleman on a daily basis. Glaser was not asked by Coleman for his opinion of the skills and abilities of any of the housekeeping and laundry employees and that he did not express any concerns about or make any complaints about any of the employees, who were under his supervision to Coleman, including Harrison and Daye.

According to Glaser, a day or two after most of the employees were rehired by Respondent Westport, Coleman informed Glaser that Harrison and Daye were not being retained as employees by Respondent Westport and that she had interviewed them and had found them to be “unacceptable candidates.” Glaser states that Coleman did not tell him why or what she found “unacceptable” about Harrison or Daye, and Glaser did not ask. In fact, he made no response to Coleman’s statement that Respondent Westport would not be retaining Harrison or Daye.

Harrison and Daye were both full-time employees, who had been working 40 hours each while employed by HSG (as well as by Respondent Westport prior to the subcontracting). According to Glaser, in order to fill these slots, he and Ricci consulted the seniority list and bumped up some part-time employees to give them more hours as required in the contract.

On further questioning, however, Glaser conceded that Daye’s full-time hours had, in

fact, been given to Marvin Williams. Williams had been employed by HSG as a per diem employee[22] and, in fact, had not been called for several weeks prior to Williams being hired by Respondent in May of 2010.

G. The Union's Post-Transition Grievances and Requests to Meet

Clark was on vacation in Iowa when the above described events concerning the termination of the laundry and housekeeping employees and their rehire as new employees occurred. When she returned from vacation on May 25, 2010, Clark was informed by her colleague, Paul Fortier, about the events of the prior week. Fortier told Clark that "everyone was just floored," and they'd never seen anything like that. Fortier informed Clark that he had gone to Respondent and spoken to Coleman about what had happened. Fortier told Clark that he had protested to Coleman that Respondent could not do what they done. Coleman replied that they had done it and added that she didn't like the way Fortier was talking to her about it and ordered him to leave the facility.

The Union filed grievances against each of the three homes, protesting the terminations and the rehire with loss of benefits and reductions in wages. In follow-up letters, the Union asked to meet to discuss the grievances.

Responses to the grievance were made by Remillard on behalf of each of the Respondent Centers. He rejected the grievances for various reasons, including that the Union had no standing to file the grievances, that the grievances were not arbitrable, and/or that the grievances should be filed with HSG.

The grievances, the Union's requests to meet on these grievances, and the responses filed by Remillard on behalf of the Respodnent Centers are set forth below:

GRIEVANCE FORM

Facility: Long Ridge of Stamford
Grievant(s) Name: All Housekeeping and Laundry Employees
Job Title: All Housekeeping and Laundry Employees
Worksite: Long Ridge of Stamford
Date Grievance Occurred: 05/17/10
Contract Article(s) Violated: Article 1, Article 2, Article 4, Article 5, Article 9, Article 10, Article 11, Article 21, Article 25, Article 38 and all other related.
Statement of Grievance: Employees in housekeeping and laundry were terminated and/or re-hired, had their wages cut, medical insurance cancelled and accrued benefits cut or lost.
Step One Date Filed:
Step Two Date Filed:
Step Three Date Filed: 05/24/10
Remedy Requested: Members to be made whole in all ways including wages, benefits, medical insurance claims pending and future claims, vacatlon·time. Holidays, differential and any and all other loss as a result of being terminated.

[22] I note that Williams had been the only employee, insofar as the record discloses, that was hired directly by HSG and who had not been previously an employee of any of the centers. Additionally, Williams was the only HSG employee, who received an HSG handbook during the "full service" period.

June 7. 2010
Vincent Klimas,
Long Ridge Health Care
Stamford, CT 06902
Fax: (203) 329-4039

Mr. Klimas,

The Union would like to offer dates to discuss the following-outstanding step II grievances:

1. Step II grievance regarding the termination of HealthBridge's subcontracting agreement with Healthcare Services Group and the subsequent transfer of employees back onto Healthbridge payroll. Dates offered: Thursday June 10 at 2:30pm, Friday June 11 at 2:30pm, Monday June 14 at 2:30pm.

2. Step II grievance-termination of Mashid Hassantalebi. The facility provided the some information regarding her case; please provide any documents from her personnel file that were relevant to your investigation. Dates offered: Thursday June 10, 1 pm or 2 pm, Thursday June 22 at 11 am, or Friday June 25 at 11am.

3. Step II grievance-termination of Marie Rose Henri. The facility provided the some information regarding her case; please provide any documents from her personnel file that were relevant to your investigation. Dates offered: Friday June 25 at 12:30pm, or Tuesday June 29 at 2:30pm.

4. Step II grievance-Holiday pay: Dates offered: Friday June 25 at 12pm, Tuesday 29 at 2pm

Suzanne Clark
Elected Organizer, District 1199

June 11, 2010
Paul Fortier, Vice President
New England Health Care Employees Union, District 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Long Ridge of Stamford

Dear Mr. Fortier:

I am writing in response to the May 24, 2010 Grievance Form from NEHCEU District 1199 ("District 1199") that you signed and submitted to Long Ridge of Stamford ("Stamford") concerning newly hired housekeeping and laundry employees.

This Grievance is invalid for several reasons:

1. Insofar as this Grievance purports to contest HSG's decision to terminate its own employees, it has been filed against the wrong Employer and has nothing to do with Stamford. If District 1199 wants to contest those terminations, it must file a grievance with the correct Employer – HSG.

2. The Stamford Housekeeping and Laundry employees referenced in this Grievance were all hired by Stamford on or about May 17, 2010, and therefore, they are all in their two-month probationary period. Accordingly, this Grievance is improper under Article 8, Section C of the CBA, which provides that: "no action of the Center with respect to such probationary employees shall be subject to the grievance and arbitration provisions of this Agreement."

3. Assuming there was a valid basis for this Grievance (as noted above, there is none), Article 28, Section D of the CBA provides that a grievance involving a "substantial number or class of Employees" may be initially presented at Step 2 of the grievance procedure. The Grievance Form you submitted says it is being presented at Step 3, which is not authorized by the CBA.

Based on the above, it is clear that District 1199 does not have any jurisdiction or standing to file any grievances against Stamford to challenge HSG's decision to terminate its own employees. Likewise, District 1199 does not have any jurisdiction or standing to file any grievances against Stamford on behalf of any probationary employees.

Stamford will not respond further to this invalid grievance, and states affirmatively that this invalid grievance is not arbitrable.

Sincerely,
Ed Remillard
Regional Human Resources Manager

cc: Vincent Klimas, Administrator Long Ridge of Stamford
Lisa Crutchfield, Vice President of Human Resources HealthBridge Management
Suzanne Clark, Elected Organizer, District 1199

GRIEVANCE FORM
Facility: Westport Health Care Center
Grievant(s) Name: All Housekeeping and Laundry Employees
Job Title: All Housekeeping and Laundry Employees
Worksite: Westport
Date Grievance Occurred: 05/17/10
Contract Article(s) Violated: Article 1, Article 2, Article 4, Article 5, Article 9, Article 10, Article 11, Article 21, Article 25, Article 38 and all other related.
Statement of Grievance: Employees in housekeeping and laundry were terminated and/or re-hired, had their wages cut, medical insurance cancelled and accrued benefits cut or lost.
Step One Date Filed:
Step Two Date Filed:
Step Three Date Filed: 05/24/10
Remedy Requested: Members to be made whole in all ways including wages, benefits, medical insurance claims pending and future claims, vacation·time.

Holidays, differential and any and all other loss as a result of being terminated.

June 7, 2010

Kim Coleman
Westport Health Care
1 Burr Rd.
Norwalk, CT 06880
Fax: 203-221-4766

Ms. Coleman,

Following up on your discussion with Paul Fortier, and the subsequent letter from Lisa Crutchfield on May 24, 2010. The union offers the following dates to discuss the termination of HealthBridge's subcontracting agreement with Healthcare Services Group and the subsequent transfer of employees back onto HealthBridge payroll:

Friday June 18 at 12:00 pm
Monday June 21 at 3:30 pm
Wednesday June 23 at 3:30 pm

Please contact me as soon as possible regarding your availability.

Suzanne Clark
Elected Organizer, District 1199

June 11, 2010

Paul Fortier, Vice President
New England Health Care Employees Union, District 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Westport Healthcare Center

Dear Mr. Fortier: 1199

I am writing in response to the May 24, 2010 Grievance Form from NEHCEU District 1199 ("District 1199") that you signed and submitted to Westport Health Care Center ("Westport") concerning newly hired housekeeping and laundry employees.

This Grievance is invalid for several reasons:

1. Insofar as this Grievance purports to contest HSG's decision to terminate its own employees, it has been filed against the wrong Employer and has nothing to do with Westport. If District 1199 wants to contest those terminations, it must file a grievance with the correct Employer – HSG.

2. Insofar as this Grievance purports to contest Westport's decision not to hire certain former HSG employees, since those individuals are not employees of Westport, they have no rights under the parties' Collective Bargaining Agreement ("CBA") and the Union has no standing or jurisdiction to file any grievances on their behalf

3. The Westport and Laundry employees referenced in this Grievance were all hired by Westport on or about May 17, 2010, and therefore, they are all in their two-month probationary period. Accordingly, this Grievance is improper under Article 8, Section C of the CBA, which provides that: “no action of the Center with respect to such probationary employees shall be subject to the grievance and arbitration provisions of this Agreement.”

4. Assuming there was a valid basis for this Grievance (as noted above, there is none), Article 28, Section D of the CBA provides that a grievance involving a “substantial number of class of Employees” may be initially presented at Step 2 of the grievance procedure. The Grievance Form you submitted says it is being presented at Step 3, which is not authorized by the CBA.

Based on the above, it is clear that District 1199 does not have any jurisdiction or standing to file any grievances against Westport to challenge HSG's decision to terminate its own employees. Similarly, District 1199 does not have any jurisdiction or standing to file any grievances against Westport on behalf of any former HSG employees who were not hired by Westport. Finally, District 1199 does not have any jurisdiction or standing to file any grievances against Westport on behalf of any probationary employees.

Westport will not respond further to this invalid Grievance and states affirmatively that this invalid Grievance is not arbitrable.

Sincerely,
Ed Remillard
Regional Human Resources Manager

cc: Kimberly Coleman, Administrator Westport Health Care Center
Lisa Crutchfield, Vice President of Human Resources HealthBridge Management
Suzanne Clark, Elected Organizer, District 1199

GRIEVANCE FORM
Facility: Newington Health Center
Grievant(s) Name: All Housekeeping and Laundry Employees
Job Title: All Housekeeping and Laundry Employees
Worksite: Newington
Date Grievance Occurred: 05/17/10
Contract Article(s) Violated: Article 1, Article 2, Article 4, Article 5, Article 9, Article 10, Article 11, Article 21, Article 25, Article 38 and all other related.
Statement of Grievance: Employees in housekeeping and laundry were terminated and/or re-hired, had their wages cut, medical insurance cancelled and accrued benefits cut or lost.
Step One Date Filed:

Step Two Date Filed:
Step Three Date Filed: 05/24/10
Remedy Requested: Members to be made whole in all ways including wages, benefits, medical insurance claims pending and future claims, vacatlon·time. Holidays, differential and any and all other loss as a result of being terminated.

June 7, 2010

Gary Caserta
Newington Health Care
240 Church St
Newington., CT 06111
Fax: (860)667-6367

Mr. Caserta.
The Union offers the following dates to discuss the termination of HealthBridge's subcontracting agreement with Healthcare Services Group and subsequent transfer of employees back onto HealthBridge payroll:

Wednesday June 16 at 11:00 am
Wednesday June 23 at 3:00 pm
Monday June 28 at 3:00 pm

Please contact me as soon as possible regarding your availability.
Suzanne Clark
Elected Organizer, District 1199
Cc: Chris Wishart

June 11, 2010

Paul Fortier, Vice President
New England Health Care Employees Union, District 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Newington Health Care Center

Dear Mr. Fortier:

I am writing in response to Suzanne Clark's June 7, 2010 letter to Gary Caserta (copy attached) concerning newly hired housekeeping and laundry employees at Newington Health Care Center ("Newington"). While NEHCEU District 1199 ("District 1199") has not yet filed a Grievance against Newington regarding this matter, I am responding to Ms. Clark's letter so there is no misunderstanding as to Newington's position on this matter.

If District 1199 were to file a Grievance against Newington concerning this matter (as it has done at two other Centers), said Grievance would be invalid for several reasons:

> Any Grievance that purports to contest HSG's decision to terminate its own employees cannot be filed against Newington, as Newington was never the Employer of HSG's employees. If the Union wants to contest those terminations, it must file a grievance with the correct Employer – HSG.
>
> All Newington Housekeeping and Laundry employees were hired by Newington on or about May 17, 2010, and therefore, they are all in their two-month probationary period. Accordingly, District 1199 cannot file a valid Grievance against Newington concerning any such probationary employees since Article 8, Section C of the Collective Bargaining Agreement provides that: "no action of the Center with respect to such probationary employees shall be subject to the grievance and arbitration provisions of this Agreement."
>
> Based on the above, it is clear that District 1199 does not have any jurisdiction or standing to file any grievances against Newington regarding HSG's decision to terminate its own employees. Likewise, District 1199 does not have any jurisdiction or standing to file any grievances against Newington on behalf of any probationary employees.
>
> Since District 1199 has not and cannot file any valid Grievance against Newington concerning this matter, Newington will not respond further to Ms. Clark's June 7, 2010 letter.
>
> Sincerely,
> Ed Remillard
> Regional Human Resources Manager
>
> cc: Gary Caserta, Administrator Newington Health Care Center
> Lisa Crutchfield, Vice President of Human Resources HealthBridge Management
> Suzanne Clark, Elected Organizer, District 1199

The further processing of these grievances have been held in abeyance pending the disposition of the instant complaint.

Clark did have one conversation, however, with Vincent Klimas, Respondent Long Ridge's administrator, about the grievances (prior to the receipt of Remillard's letter, detailed above). Clark told Klimas that in her view what Respondent Long Ridge had done was preposterous and that the employees were forced to become new employees and lost their seniority. Clark added that "it was odd that everyone went back to exactly the same hours, the same positions when they wouldn't be bound by seniority in their mind." Clark emphasized that Respondent Long Ridge should have just transferred the employees back, like when they transferred them out in the first place. Clark added that many of the employees built up a lot of seniority and that was appalling for them to lose it overnight.

Klimas became very emotional, "kept looking down" and said that he knows, he understands, but "this is above my head." Klimas added that he was here to listen, but it was a corporate decision (referring to Respondent Healthbridge) and that Respondent Long Ridge was "following the contract."

No direct testimony was offered by any official of HSG or Respondents as to who made the decision to cancel the subcontracting with HSG or why that decision was made.

As noted, various HSG managers were called as witnesses but were not informed by their supervisors or anyone else of the answers to these questions.

Anthony Lecky testified that after the employees were rehired as new employees, he complained to Crane of HSG about the fact that he had lost benefits as a result of being hired as a new employee by Respondent Long Ridge. Crane responded to Lecky that it was Long Ridge's decision and that HSG didn't fire the employees and the Long Ridge decided to "take it over," the same way that HSG "took it over" from them. Lecky repeated that it was unfair. Crane replied that isn't HSG's fault and that he would have to speak to Long Ridge about the employees' benefits.

Baldwin testified that shortly after she was rehired by Respondent Westport as a new employee, she asked Ricci and Glaser why the decision was made to terminate the employees from HSG and rehire them as employees of Respondent Westport. Baldwin testified that she said to Ricci and Glaser that they should be honest with her and tell her what is going on. According to Baldwin, both Ricci and Glaser responded that they believed that Respondent Westport owed HSG money and that HSG had not received all its money. Therefore, they informed Baldwin that "we sold you all back over to them." They added that they thought that when the employees got sold back everything was supposed to be the same and that they had no idea that the employees and benefits were going to get cut.[23]

H. The March 2010 Layoff and Related Information Requests at Respondent Long Ridge

On February 23, 2010, Clark, Union President Baudier and Vice-President Fortier met with Klimas and Lisa Crutchfield, Respondent Healthbridge's vice-president of human resources, at Respondent Long Ridge. Respondents had recently received a negative report from the state, had closed their admissions and were considering closing down the first floor wing of the home. They asked the union representative if it would waive the 45-day notice provision in the contract for layoffs. Baudier responded on behalf of the Union that it would not waive its rights since the parties did not have "a good relationship of trust" to be able to do something like that. Klimas stated that he was disappointed that there hadn't been lines of communication open (Klimas had only recently become the administrator and offered to commit to regularly meet with the Union to be able to air grievances). Neither Klimas not Crutchfield informed the Union at the meeting that there would be a layoff or when or how it might commence.

Within a few days of this meeting, Respondent began laying off CNAs by taking some CNAs off the schedule for certain days or shifts. Clark learned that CNAs had lost anywhere from one to three days of work per week, and some were denied the chance to use sick or vacation time so as not to lose pay for the lost hours.

On March 2, Clark raised the issue at a joint labor-management meeting with Klimas. Clark asserted that Respondent Long Ridge's actions were improper, that the Union was not notified as required by the contract and demanded that Respondent Long Ridge rescind the layoffs immediately and that the employees be paid for any loss of day's work. The record does not reflect what response Klimas made to Clark's comments.

[23] Ricci did not testify. Glaser denied making the remarks attributed to him by Baldwin. Neither Coleman nor any representatives from Respondent Westport was present during the conversation.

On March 2, Clark sent the following information request to Klimas regarding the layoffs.

3/2/10

Vinny Klemas[sic]

Information Request regarding layoffs.

1) List of all Bargaining unit members employed since September (information covering all layoffs between the fall and the present day) including

a. Name
b. Job Title
c. Shift
d. Pay Rate
e. Date of Hire
f. Hours (prior to layoffs)
g. Hours (after layoff)
h. Affected by layoff (laid off or transferred or bumped)
i. Date Laid off
j. Date recalled

Sincerely,
Suzanne Clark

On March 11, the Union received a notice of layoff in writing as required by the contract involving a layoff of RNs, LPNs and CNAs to take effect on April 25, 2010. The Union had not received such a letter concerning the layoffs, which had begun in early March after the Union declined its contractual rights to notice, as described above.

By March 17, the Union had still not received the information requested on March 2. On that same day, the Union file a grievance protesting the layoffs as violative of the contract, requested that the layoffs be rescinded and added and included an additional information request. It is set forth below.

March 17, 2010

Mr. Vincent Klimas
Long Ridge of Stamford
710 Long Ridge Road
Stamford, CT 06902

Dear Mr. Klimas:

Following up on our conversation yesterday, the union files a step II class action grievance regarding the gross continued violation by Long Ridge of Article 9, section D-layoffs and any all other related articles.

The Union was notified of the layoffs on 3/11/10 and the facility has already begun removing employees from the schedule. In addition to the 45 day notice violation, the facility has violated the implementation by not applying reverse seniority and providing no notification to employees that they have been laid off

prior to being removed from the schedule.

Beyond the obvious violation of our contract, by not notifying employees of hour changes, the facility has also violated Connecticut State Department of Labor statutes Chapter 558, Section 31-71f.

We insist that employer immediately cease and desist its unlawful layoff practices and work with the union to discuss the proper execution of the employers planned layoff.

All members who have been improperly laid off must be made whole in every way, including but not limited to any loss in accrual of benefits (vacation, sick, pension, etc) due to improper removal, payment for days in which they were removed from the schedule and days in which they used their own time to cover the improper removal.

The union requests the monthly master schedule and daily schedules for January, February, and March 2010.

The union is disturbed by what is yet another case of a systematic violation of the Collective Bargaining Agreement to add to current grievances and pending arbitrations regarding these same issues.

Sincerely,
Suzanne Clark

Klimas responded to Clark on March 22, 2010, stating that employees removed from the schedule on the first floor have been placed back on the floor. Clark received that document on March 25, 2010 and added the following handwritten notation to document, which Klimas signed. "Improper layoff, in order to make employees whole employees must be repaid. No hours should have been reduced until after the 45-day period."

The Union advanced the grievance to Step 3 by letter dated April 12, 2010, as follows:

April 12, 2010
Ed Remillard
Healthbridge Management
57 Old Road to Nine Acre Corner
Concord, MA 01742

Dear Mr. Remillard,

This letter follows up the hand delivered step 3 request presented on April 8th, 2010.

We are extremely disappointed that while the center claims interest in, finally, processing grievances and has begun scheduling and holding more frequent meetings with the union, no tangible progress is being made. We re-explain the same issues week after week and after being promised answers are met with the need to clarify our position yet again and wait another week for an answer.

Absent another week without decisions, the union files to step 3 the following

grievances:

- On March 17th the union rued a step 2 class action grievance regarding the gross continued violation of Article 9 section D—layoffs and requested the center immediately cease and desist and make members whole by restoring any vacation or personal time they used to supplement their improper removal from the schedule and/or payment for the wages lost when they were improperly removed from the schedule. Since then, the union has met and fulfilled the centers request for reclarification on 3/18/10, 3/25/10, 4/1/10, and most recently on 4/8/10. The union finds management request to wait yet another week for a potential response unacceptable. The grievance is moved to step 3.

On May 6, 2010, Clark met with Remillard with respect to the Step 3 grievance. Remillard conceded that the layoff had been improper but noted that it had been rescinded and the staff had been placed back on the schedule. Remillard also committed to working with the Union in making the employees whole. Clark reminded Remillard that the Union had still not received information requested from Respondent Long Ridge to be able to establish the amounts of money due to employees. Remillard summarized the Step 3 meeting and responded in a letter dated May 20, 2010, as set forth below:

May 20, 2010

Suzanne Clark
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

RE: Step Three Grievance Hearing-Illegal Layoff

Dear Ms. Clark:

I am writing in response to the Step 3 grievance presented on May 6, 2010 regarding the Unions claim that the Center failed to make members whole for an illegal layoff that the Center attempted to conduct.

The Union argued that while the Center rescinded the layoff and placed staff back on the schedule, that the Center never made the employees whole.

The Union stated that some staff went unpaid for the days they were taken off the schedule, or had to use vacation time. The Union is demanding that the employees be made whole.

Please note that the Center has determined to make all employees whole who were affected by this action.

Please be further advised that the Center's willingness to take this non-precedent setting action does not constitute an admission that its previous decision to remove members from the schedule constituted a violation of the collective bargaining agreement. Rather, the Center is willing to make this accommodation as a good faith gesture to advance labor relations between the Center and the

Union.

Sincerely,
Edmund Remillard
Regional Human Resources Manager

Respondent responded to the Union's information requests on June 25, 2010 when Klimas provided Clark with a listing of "employees that were paid directly per payroll or were given back vacation time, etc. related to the past 3/11/2010 layoff Notice." Clark met with Klimas and told him that the response was insufficient since it did not accurately demonstrate to the Union everyone, who was affected by the layoffs, and she needed to see payroll records so she could see whose hours had been reduced.

On July 8, Clark met with Klimas again. She reiterated to him that she needed to see the payroll records so she could compare these records to their "control" hours and asked to see "any other call outs or any other things that would show, including what the daily schedule or the master schedule any kind of requests for personal time, any kind of sick time, or anything like that, so that I could establish that it was not that they were forced to take sick time so they didn't lose their pay, but it was—it was on their own behalf." Although Clark had indicated to Klimas that payroll records would disclose this data most accurately, it was not provided to the Union until July 22, 2010 when it received the payroll and other records that it had requested.

The Union filed a demand for arbitration on August 24, 2010 concerning the layoff and the failure to make whole employees for lost wages and time lost.

The Union and Respondent Long Ridge have been continuing to negotiate concerning the amounts due to employees, but some issues are still unresolved. The arbitration is in abeyance.

I. The Discontinuance of Paying Employees Time and a Half for Overtime

It is undisputed that in late 2009 and in early 2010 employers, all of Respondent Centers discontinued their practice of paying all bargaining unit employees time and one half for hours worked on holidays. Prior to that time, all employees had received time and a half pay when working on a listed holiday, no matter how many hours a week they had worked or whether the employee was considered full-time, part-time or per diem.

With some variations in wording,[24] the CBAs at all facilities contain a section (Article 15) entitled "Holiday Provisions." Article 15(A) provides "holiday pay at their regular straight time hourly rate" for non-probationary full or part-time employees, who work 20 or more hours per week, prorated for part-time employees, and lists nine specific holidays. Article 15(B) states that:

[24] The CBAs at some of the facilities contain slightly different wording that does not seem to make a substantive difference to this dispute. Thus, the CBAs at Wethersfield, Newington, and Westport differ very slightly but with no substantive difference in the wording of the first half of Article 15A, and contain the same provision in Article 15B contained herein. The CBA in Westport contains additional language following the above: "If an Employee elects not to take their holiday pay, they have 90 days to take the day off on a mutually agreeable date. If they do not take the day off, they will be paid in the next paycheck following 90 days."

> In the event that an Employee is required to work on any of the holidays listed above, she/he shall be paid at the rate of one and one half times her/his hourly regular rate of pay for all hours worked on such holiday, and shall in addition receive an extra day's pay at her/his regular rate, or an additional day off with regular pay, scheduled by mutual agreement with her/his supervisor.

As noted below, during the grievance process, in one of its answers Respondent Healthbridge relied upon another portion of the Westport CBA, its Article 14(H), Hours and Overtime, which provides as follows:

> 14.H. Part-time employees who regularly work an average of twenty (20) hours or more per week shall receive the following fringe benefits on a pro rata basis: holidays, personal days, vacation, sick leave, funeral leave, jury duty leave and uniform allowance. All paid hours, including sick time, vacation time, holidays, funeral days and personal days, will count as time worked for the purpose of calculating benefit eligibility.

Respondents, at some point in late 2009, began to change its prior practice and ceased paying holiday pay to part-time and per diem employees at all of the centers.

Clark first received reports after Thanksgiving of 2009 that employees at various centers had not been receiving their holiday pay. The Union subsequently filed grievance against all of the Respondent Centers, alleging that they unilaterally changed conditions of employment by denying time and a half pay for part-time and per diem employees, who worked on holidays.

Gwen Dewkett is an LPN employed at Respondent Danbury as a part-time employee. She worked 15 hours a week regularly scheduled (control hours) but often worked more than 16 hours per week. She would average 24 to 32 hours a week depending upon availability of work. She began working 8 control hours in 2007. Since 2007, Dewkett had always received time and a half pay when she worked on a holiday regardless of how many hours she worked in any week.

In September of 2010, Dewkett worked on Labor Day but did not receive time and a half pay as in the past. She complained about this failure in a conversation with Christine Gottlieb, a clerical employee of Respondent Danbury and Administrator Mike Pescatello. Dewkett informed Pescatello and Gottlieb that “the contract was being broken. That was in the contract that we should get paid for working a holiday, you get paid time and a half and that you got prorated holiday time if you worked 20 hours a week.” Pescatello responded that it wasn’t his decision, that it was upper management’s decision and that it would probably go to arbitration.

On June 15, 2010, Clark met with Pescatello at a Step 2 grievance meeting and tried to discuss the issue. Clark asked the payroll employee, who was also present, when she started doing things differently (in regard to holiday pay) and when she was told to start doing it differently. Clark added that it looks like from the records that Clark had that it was on Thanksgiving. Clark asked her if she had received a memo stating to start changing it. Pescatello instructed the employee not to answer Clark’s question.

Clark also had a Step 2 meeting with Administrator Klimas at Respondent Long Ridge sometime in late June of 2010, where the issue was discussed. Clark reminded Klimas that employees had always received time and a half before and that Respondent Long Ridge had stopped. Clark said, “You can’t just change that.” Klimas responded that “It’s above me, it’s from

corporate. We believe that we are following the contract."

Respondents presented no witnesses from Respondent Healthbridge. Thus, it has not provided any explanation as why it changed its practice and policies with regard to payment of holiday pay in 2009 and 2010. Respondents substantively responded to the Union's grievances with regard to Respondent's Danbury, Long Ridge and Westport.

Administrators Klimas and Pescatello responded to the Step 2 grievance meetings concerning the holiday issues at their facilities.

Remillard responded to the Step 3 grievance by the Union on behalf of Respondent Westport.

These responses are set forth below.

July 7, 2010
Suzanne Clark
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

RE: Step Two Grievance Hearing--Holiday Pay

Dear Ms. Clark:

I am writing in response to the Step 2 grievance presented in your Grievance Form regarding holiday pay for bargaining unit employees working at Long Ridge Health Care Center.

The Union suggested that Long Ridge Health Care Center violated Article 15-Holidays Provisions by denying time and one half pay for those part time and per diem employees who worked the given holidays specified in the Collective Bargaining Agreement.

Contradictory of the Union's claim, Article 15-Holiday Provisions Section A-B states that, "non-probationary full-time or part-time Employees, who work twenty (20) hours or more a week, shall be entitled to holiday pay at their regular straight time hourly rate (prorated for eligible part-time Employees…Section B...in the event an Employee is required to work on any of the holidays listed,...she/h[e] shall be paid at the rate of one and one half times his/her regular rate of pay for any hours worked on such holiday..." Therefore, part-time employees working less than twenty (20) hours per week and per diem employees are not eligible for holiday pay.

It would appear that the center has not violated Article 15-Holiday Provision of the Collective Bargaining Agreement. As such, the Step II grievance on holiday pay is denied.

Sincerely,
Vincent J. Klimas
Administrator

cc: Ed Remillard, RHRM

June 17, 2010

Ms. Suzanne Clark
SEIU Healthcare – 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Step II Meeting – June 15, 2010

Dear Ms. Clark:

After careful review of your position presented at the June 15, 2010 meeting I have reached the following decision:

Holiday Pay – Article 15, Holiday Provisions, Section "A" indicated that "Non-probationary full-time or part-time employees who work twenty (20) or more hours a week shall be entitled to holiday pay at their regular straight-time hourly rate (prorated for eligible part-time employee for each of the following holidays."

As you are aware, Danbury HCC reviews each employee's work hours on a quarterly basis to determine benefit eligibility. The provision of holiday pay is subject to benefit eligibility. Employees who work 20+ hours would be eligible for benefits thus eligible for holiday pay. Those employees who fail to meet the eligibility requirements would not then be eligible for holiday pay.

Article 5, Management Rights, specifically delineates management's right to "determine and modify the operational measures and means; and to carry out the normal functions of management." There is no provision for union discourse in determining the management and operation of the nursing home.

Sincerely,
Michael J. Pescatello, BA, NHA
Administrator, Danbury HCC

Cc: Edmund Remillard, Regional Human Resources Manager
Lisa Crutchfield, Vice President of Human Resources

July 9, 2010

Suzanne Clark
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Step Three Grievance Hearing – Holiday Pay: Part-Time and Per Diem Employees

Dear Ms. Clark

I am writing in response to the Step 3 grievance presented on July 1, 2010, regarding holiday pay for part-time and per diem bargaining unit employees at Westport Health Care Center.

The Union argued that Westport Heath Care Center violated Article 1 (recognition and definitions) and Article 15 A & B (holiday provisions) by denying time and one half pay for part-time and per diem employees who work less than 20 hours per week.

The Union failed to explain how the Center has violated Article 1. In particular, the relevant language in the contract expressly provides that:

Article 14, H

Part-time employees who regularly work an average of twenty (20) hours or more per week shall receive the following fringe benefits on a pro rata basis: holiday, personal days, vacation, sick leave, funeral leave, jury duty leave and uniform allowance. All paid hours, including sick time, vacation time, holidays, funeral days, and personal days, will count as time worked for the purpose of calculating benefit eligibility.

Article 15, A

Effective upon ratification, non-probationary full-time or part-time employees who work twenty (20) hours or more a week shall be entitled to holiday pay at their regular straight time hourly rate (prorated for eligible part-time employees) for each of the following holidays:

New Year's Day
Martin Luther King Day (1/1/07)
President's Day (effective 1/1/06)
Easter
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Therefore, part-time employees working less than twenty (20) hours per week and per diem employees are not eligible for holiday pay.

Given the clear and unambiguous language in the contract, it is clear that the Center has not violated Article 1 or Article 15 A/B of the CBA. Accordingly, the grievance is denied. The Employer reserves its right to challenge the procedural and/or substantive arbitration of the grievance.

Sincerely,
Edmund Remillard
Regional Human Resources Manager

CC Kimberly Coleman, Administrator
Lisa Crutchfield, Vice President of Human Resources

J. The Changes in Calculating Overtime

It is undisputed that at various times in 2010 all of Respondent Centers stopped including the half-hour paid periods as time worked in calculating daily overtime.

Following Respondents' 2010 institution of a new policy requiring employees to state whether or not they had an "uninterrupted break" when they punch out for the day, Respondents began changing the past practice of including that paid half-hour in hours totaled for overtime computations. Since March 2010, Respondents have been paying employees for their lunch period regardless of whether they take a true break at that time but are excluding that half-hour lunch period from the tally of hours used for the computation of overtime unless the employee certifies that they took no lunch.

This issue involves application of contract provisions that vary slightly among the six facilities. The provisions are the same at Respondents Wethersfield, Long Ridge and Newington facilities, where Article 14, Hours and Overtime, provides in pertinent part that:

> A. The normal work week for full-time Employees shall be forty (40) hours consisting of eight (8) hours each day including a paid lunch period of one-half (1/2) hour. An Employee who works a shift of six (6) hour[s] or more shall work a shift inclusive of a one-half (1/2) hour paid meal period.
>
> B. Employees working a full shift shall be entitled to two (2) rest periods of fifteen (15) minutes in each working day, or for every four (4) hours worked, a fifteen (15) minute rest period. Breaks shall not be unreasonably denied by the Center.
>
> E. Employees who, at management's request, work in excess of eight (8) hours per day shall receive one and one-half (1-1/2) times their regular straight time hourly rate for hours actually worked in excess of eight (8) hours per day or forty (40) hours per week in anyone work week.
>
> F. For the purpose of determining hours worked in order to compute weekly overtime, any leave with full pay except sick leave shall be included. Paid sick leave and unpaid leave of any kind shall not be included.

The Danbury and West River language in Article 14(E) is worded somewhat differently, with two separate paragraphs, one for hours in excess of 40 hours and one for employees who work over 8 hours. Nonetheless, both clauses refer to payment for “hours actually worked.”[25] At

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[25] Specifically, Danbury's Article E is as follows:

> Employees who work in excess of forty (40) hours in anyone work week shall receive one and one half (1-1/2) times their regular straight time hourly rate for hours actually worked in excess of forty (40) hours in anyone work week.
>
> Employees, who, at management's request, work in excess of eight (8) hours per day shall receive one and one-half (1-1/2) times their regular straight time hourly rate for hours actually worked in excess of eight (8) hours in anyone day.

The former clause does not make payment contingent on the work having been at management's request, but the "at management's request" language was never mentioned by Respondents in its grievance answers.

Westport, the computation of overtime is addressed in the first two sentences of Article 14(A). The first two sentences differ from Wethersfield's in that they contain no *proviso* about the work being done at the request of management. Further, they contain only a provision for daily overtime pay, not overtime for hours in excess of 40.[26]

Several employees from different homes testified about the "lunch punch" issue, which Respondent concedes was implemented all six facilities. Eva Fal, a leading union delegate in Newington, testified that in 2010 the Newington facility introduced a new system asking employees when they punched out for the day to "agree or disagree" that they took an uninterrupted lunch break. The memo concerning this issue, dated February 26, 2010, stated *inter alia* that "we will now be asking employees to validate that they took a meal break...if you reply "No" you will need a supervisor to override your punch out…Please let me know if you have any questions about this change."

Fal explained the practical impact of this change. She testified that for the pervious 14 years if an employee worked a 12-hour shift, they received four hours of overtime. But now, since the new policy went into effect, an employee who works that same 12-hour shift must "agree or disagree" that she received an uninterrupted lunch break, and if she says yes, she loses a half hour of overtime pay. According to Fal, "If you punch 'disagreed', they tell you 'don't forget to agree.'" The Union had no advance knowledge of the issuance of this memo.

By July 15, 2010, Respondent had added two sentences near the end of the memo it released to the other homes. "As a reminder, information entered into the time clock must be honest and accurate. Falsification of time, including whether a meal break was or was not taken, is a serious matter and may result in progressive discipline." Atkinson testified that the memo released at Long Ridge was never negotiated with the Union before it went into effect. The Long Ridge memo, dated July 15, 2010, is identical to the one issued at the Westport facility, only the administrator's name was changed.

According to Gwen Dewkett, an LPN at Danbury, in the past if an employee "worked" 8 ½ hours in a day, e.g. from 7:00 a.m. to 3:30 p.m., including the paid half-hour lunch period, she was paid 8 ½ hours for that day with the extra half-hour at the overtime (time and a half) rate, even if she took a true break during the half hour lunch. She testified that in about April 2010, Respondent introduced a new addition to the time clock requiring employees "to punch out if you got your lunch break." Employee had to "agree or disagree" that they received a half-hour lunch break when punching out. Up until then, employees had "never had to punch out whether we got our lunch break or not." Dewkett immediately lost an hour of overtime pay in April 2010 due to the new "system."

Coladarci, who rarely works overtime at the Danbury home, confirmed Dewkett's testimony that in 2010 Respondent introduced a new feature on its time clock, a change, which impacted one's amount of credited overtime on a given shift. The amount of overtime you receive "all depends on how you -- when you punch out on the time clock...your choices are that you have to accept that you've taken a break or you don't accept…If I were to accept they would be deducting me a half hour (of overtime pay)." According to Coladarci, she was pressured into answering "accept" even when not taking her break because the first time she answered "no" she received a phone call from the scheduler, who told her that she had to hit "accept,"

[26] Specifically, the Westport CBA's first two sentences of Article 14(A) state that "All work in excess of eight (8) hours per day shall be paid at time and one-half (1-1/2). This does not include members who work doubles as part of their regular schedule."

even if she didn't take a break. Coladarci refused to play along and has continued to decline to lie because she never leaves the floor to take a proper half-hour break.

The Union first raised the issue at Danbury during a "joint study meeting" in May 2010 when Clark asked administrator Pescatello and DNS Betty Aikens whether this new lunch punch question would create a new area of discipline and whether there were any other new changes along with this new system. Pescatello mentioned something about Wal-mart and urged the nurses to be honest with their answers. As noted above, Respondents did not dispute the existence of the change.

Once the Union discovered that this new policy had been instituted and began hearing that as a result employees were losing overtime hours, it began to file grievances with the centers over the matter. The grievances filed against Respondent Danbury and Respondent Newington on this issue are as follows:

> June 2, 2010
> Michael Pescatello
> Danbury Health Care Center
> 107 Osborne St
> Danbury. CT 06810
>
> Mr. Pescatello,
>
> It has been brought to my attention that Danbury Health Care Center has changed its past practice regarding the calculation of employees' lunch period.
>
> This is, especially disturbing since the employer was presented with the opportunity to address any such changes in the terms and conditions of employee's employment in our last labor management meeting held May 3, 2010. In fact, at this meeting we discussed why the employer had begun added an additional question onto their time clock functions asking employees to verify at the end of the shift if they had been offered a lunch break and whether they had taken it.
>
> Your response related to department of labor requirements and new requirements from corporate. At no time did you state that the facility would be instructing a new manner of calculating employees pay and benefits.
>
> To be clear: any and all changes terms and conditions of union employees must be negotiated with the union prior to implementation. The company has clearly changed its past practices and must immediately cease and desist and provide a detailed account of the new procedure that it has attempted to implement and that exact date on which it was enacted.
>
> The union files a step II class action grievance for violations of Article 1 and 14 and any and all related articles that may apply once the facility provides the union with the entirety of its new policy. In order to remedy the situation, the union requests that all calculations contingent on the facility's new lunch period calculations be restored and all employees be made whole in every way.
>
> Suzanne Clark
> Organizer, District 1199

June 14, 2010

Gary Caserta
Newington Health Center
240 Church St
Newington, CT 06111

Mr. Caserta,

It has been brought to my attention that Newington Health Care Center has changed its past practice regarding the calculation of employees' lunch period.

As you are aware, any and all changes to terms and conditions of union employees must be negotiated with the union prior to implementation. The company has clearly changed its past practices and must immediately cease and desist and provide a detailed account of the new procedure that it has attempted to implement and that exact date on which it was enacted.

The union files a step II class action grievance for violations of Article 1 and 14 and any and all related articles that may apply once the facility provides the union with the entirety of its new policy. In order to remedy the situation, the union requests that all calculations contingent on the facility's new lunch period calculation be restored and all employees be made whole in every way.

Christopher Wishart
Organizer, District 1199

Cc: Suzanne Clark. Organizer District 1199; Atty John Creane

Administrator Pescatello responded to the Union's grievances on behalf of Respondent Danbury, in writing on June 17, 2010.

That response is set forth below:

June 17, 2010

Ms. Suzanne Clark
SEIU Healthcare -1199
77 Huyshope Avenue
Hartford, CT 06106

Re: Step II Meeting – June 15, 2010

Dear Ms. Clark:

After careful review of your position presented at the June 15, 2010 meeting I have reached the following decision:

Employee Lunch Period – Article 14, Hours and Overtime, Section E clearly

states that “employees who, at management’s request, work in excess of eight (8) hours per day shall received one and one-half (1 ½) times their regular straight time hourly rate for hours actually worked in excess of eight (8) hours in any one day”. We concur completely with this provision. However, we differ on the definition of what constituted the definition of “work”. Webster defines works as an “exertion or effort directed to accomplish something; labor; toil; something on which exertion or labor is expended; a task or undertaking, a productive or operative activity.”

In article 14 we agreed to provide full-time employees with “a paid lunch period of one-half (1/2) hour”. However, we feel that the paid lunch break does not constitute work. There is no “exertion or effort directed to accomplish something.” There is no “labor or toil or something on which exertion or labor is expended.” There is no “task or undertaking, nor is there a productive or operative activity”.

Consequently, since there is no work being done during a lunch break, we consider it to be non-productive time outside the purview of this contractual provision.

Article 5, Management Rights, specifically delineates management's right to "determine and modify the operational measures and means; and to carry out the normal functions of management." There is no provision for union discourse in determining the management and operation of the nursing home.

Sincerely,
Michael Pescatello, BA, NHA
Administrator, Danbury HCC

Cc: Edmund Remillard, Regional Human Resources Manager
Lisa Crutchfield, Vice President of Human Resources

Gary Caserta, Respondent’s Newington Administrator responded to the Union on July 1, 2010 with respect to this grievance at Step 2. Subsequently, a Step 3 meeting was held on September 29, 2010 with Remillard. On October 7, 2010, Remillard issued Respondent Healthbridge’s Step 3 response concerning this grievance. These responses are as follows:

Date: July 1. 2010

Mr. Chris Wishart
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

Grievance Dated, Employees are entitled to half hour lunch break and 2 fifteen minute breaks when working 40 hours.

Grievance Response: The need to ensure that eligible employees are being given the opportunity to take an uninterrupted meal break, and to track those instances when an eligible employee has not taken the break.

Any additional questions please contact me.

Thank you.
Gary Caserta
Administrator

October 7, 2010

Mr. Chris Wishart
New England Health Care Employees Union
District 1199
77 Huyshope Avenue
Hartford, CT 06106

RE: Step 3—Article 1 and 14, Half Hour Lunch

Dear Mr. Wishart:

I am writing in response to the Step 3 meeting held on September 29, 2010. During this meeting the Union argued that Newington Health Care Center was violating Articles 1 and 14 of the Collective Bargaining Agreement (CBA) based on the Center's requirement that staff confirm that they were able to take a 30 minute lunch break during their shift.

At the onset, the grievance appears untimely and is no longer viable subject to the grievance an arbitration provisions in the CBA. Notwithstanding, and with respect to the merits of the grievance, the Union (via its letters dated June 3, 2010 and June 14, 2010 – Step 2 Request by Christopher Wishart) argued that Union members "need to be paid for all hours of overtime after 8 hours in a day or 40 hours in a week, which includes break time," and that "the Center has changed its past practice regarding the calculation of employee's lunch period, which was a change in the terms and condition of employment" without negotiating with the Union.

Contrary to the Union's arguments the Center has not violated Articles 1 or 14 of the CBA.

To begin with, as it relates to how the Center is calculating the lunch time break, the Center is not in violation of the CBA. While the lunch break is paid, it is not time worked. As such, based on the language in Article 4 section E, it is clear that the 30 minute break period should not be calculated at an overtime rate.

> Employees, who, at management's request, work in excess of eight (8) hours per day shall received one and one-half (1 ½) times their regular straight time hourly rate for hours actually worked in excess of eight (8) hours in any one day or forty (40) hours per week in any one work week (emphasis added).

Additionally and in conclusion, the Union failed to make its argument that the Center made a change in the terms and conditions of employment. As a matter of fact, contrary to the Union's position, the Center's conduct directly correlates with the terms and conditions negotiated by the member's business agents.

Accordingly, the grievance is denied. The Employer reserves its right to challenge the procedural and/or substantive arbitrability of the grievance.

Thank you for your attention to this matter.

Sincerely,
Edmund Remillard
Human Resources Manager
HealthBridge Management

CC: Jarrett McClurg, Administrator
Lisa Crutchfield, Senior Vice President of Labor Relations

Respondent made no substantive response to the Union's grievances over this issue concerning the other centers but instead made procedural objections complaining that the grievances were not properly filed.

As in the case of the holiday pay changes, detailed above, Respondents produced no witnesses to explain its deviation from past practice with respect to overtime calculations for lunch periods.

K. Respondent Wethersfield's and Respondent Danbury's Implementation of New Eligibility Standards for Employees to Receive Various Benefits

Respondents stipulated that Respondent Wethersfield and Respondent Danbury changed the way that they determined eligibility for part-time employees to receive prorated holiday pay, personal days, vacation days, sick days and uniform allowance. In that regard, sometime in mid-2010, these Respondents implemented a new policy (without bargaining with the Union) that various benefits would henceforth be available only to those employees specifically hired or "on the books" for positions over 20 hours per week, regardless of the actual number of hours worked. As a result of the Respondents' new interpretation of existing policies and practices, employees in those two homes lost benefits they had previously enjoyed, including holiday pay, personal days, vacation days, sick days and the uniform allowance. Evidence presented at the hearing revealed that before mid-2010 employees in those two homes, who regularly worked over 20 hours per week, were eligible for benefits regardless of the position to which the employees were hired or regularly scheduled.

The record reveals that in late July 2010, employees at Danbury and Wethersfield began to lose benefits (beyond those discussed above) that they had previously enjoyed. Respondents simply created and imposed a new standard. After mid-2010, benefit eligibility was now based on whether the employees were hired for 20 or more hours per week, known generically within their respective facilities as one's "control hours" (Danbury) and hours "in/on the book(s)"(Wethersfield). Clark testified that the control hours and "on the books" hours refer to the same concept of hours that an employee is guaranteed to receive each week. Whatever those hours are labeled, they are the hours that the employees are regularly scheduled for as opposed to hours they "pick up" after the schedule is posted, hours which are often quite substantial.

The relevant contract language is contained in the Wethersfield labor agreement in Article 14(H). The identical language is found within the Danbury CSA at paragraph 14(I):

> Part-time employees who regularly work an average of twenty (20) hours or more per week shall receive the following fringe benefits on a pro rata basis: holidays, personal days, vacation, sick leave, funeral leave, jury duty leave and uniform allowance. All paid hours, including sick time, vacation time, holidays, funeral days and personal days, will count as time worked for the purpose of calculating benefit eligibility.
>
> Article 16, Personal Days, in each contract, provides:
>
> A. Non-probationary full-time Employees at the conclusion of their probationary period shall begin to accrue personal days on the basis of one (1) day for each three months of employment. Upon reaching their anniversary date, the Employee shall be entitled to three (3) personal days for use over the next anniversary year. Non-probationary part-time Employees who work twenty (20) hours a week or more will receive three (3) personal days on a pro rata basis.

Similar, but not identical, provisions offering prorated benefits for part time employees "who work twenty (20) hours or more a week" are contained in the articles concerning holiday pay, vacation, sick leave and uniform.[27] Other provisions for various types of paid leave and unpaid leave (Article 19 and 20) simply refer to eligibility for "employees" without distinguishing categories or hours of service.

LPNs Virginia Coladarci and Gwen Dewkett testified concerning the 2010 change in benefit eligibility standard at Danbury. Dewkett, who works the 11 p.m. to 7 a.m. shift at Danbury, testified that she has had 16 "control hours" for three of the past four years she worked for Danbury. An LPN since 1971, she explained that the term "control hours" refers to one's guaranteed hours, not the hours one actually works. When hired in 2007, she was only given 8 control hours, but that amount was increased a year later to 16. Despite having 8 "control hours" in 2007 and 16 control hours from 2008 to 2010, she has regularly worked an average of 20 hours or more per week since being hired, averaging 16 to 24 hours a week in the years 2007 through 2009, and 24 to 32 hours a week in 2010. As such, Dewkett is considered a "part-time" employee.

Dewkett provided evidence regarding the 2010 loss of eligibility for certain benefits, including both categories of "holiday pay" benefits, described above, plus the uniform allowance. Since 2008, she had received benefits, including time and a half pay for working a holiday, plus

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[27] Article 15 Holiday Provisions (see quotation in section concerning the holiday pay changes, above)

> Article 17(A) Vacations: Non-probationary full-time and part-time Employees who work twenty (20) hours or more a week shall be entitled to accrued vacations each year with pay (pro-rated for eligible employees) as follows: (portions deleted)
>
> Article 18(A) Sick Leave: Part-time Employees who work twenty 20 hours a week or more shall accrue sick leave days on a pro-rata basis.
>
> Article 24(A) Uniform Allowance: The center will provide an annual uniform allowance of Three Hundred Dollars...for full-time Employees, prorated for part time Employees, who work twenty (20) or more hours a week..."

prorated time, a uniform allowance and sick time. Her “control hours” had never before been a factor until a change in the summer or early fall of 2010 deprived her and others of benefits.

Dewkett, who saves her pay records, testified that she received the proper pay for both the Easter and Memorial Day 2010 holidays. She worked on both holidays and received the time and a half hourly rate for hours she worked that day and received prorated holiday pay. For the July 4 holiday, which she did not work, she received prorated "holiday hours."

As noted above, in August 2010, Dewkett had heard from a coworker of a change in the benefit eligibility standard. She went directly to speak to HR representative Christine Gotthard and Administrator Pescatello and told them that the contract was being broken and "that this was in the contract that we should get paid for working a holiday, you got paid time and a half and you got prorated holiday time if you worked 20 hours a week." Pescatello told her that this wasn't his decision and attributed the practice to upper management.

Dewkett worked Labor Day 2010 but only received straight time pay. Her pay records also reveal that after July 4, 2010 she did not accrue or receive any additional "holiday hours," the prorated pay she had always received when not working a holiday. According to Dewkett, after July 4, 2010, she "did not get paid any longer for holiday time for holidays, whether I worked them or not." In September 2010, Dewkett did not receive the annual uniform allowance, which she had received in the previous two years. She also discovered that she could no longer get paid for her accumulated personal days, another change in past practice.

Coladarci, another part-time nurse at Danbury, testified that, like Dewkett, she has averaged 24 to 30 hours a week since at least 2007, despite having just 16 "control hours." Beginning in 2005 or 2006 and continuing to July 2010, she received full-time benefits, "sick pay, vacation, holiday, time and a half for holiday, which, I'd always gotten, uniform allowance." She also received a uniform allowance in mid-September of each year. Respondent Danbury's payroll and Human Resources representatives had told her years ago that she was eligible for these benefits by virtue of working 24 to 30 hours a week.

All this changed in July 2010, when she was called to the administrator's office, where she met with him, DNS Aikens and Gotthard, who told her that she "would no longer be getting sick pay, vacation pay, holiday and uniform allowance." Pescatello told Coladarci that Respondent was "going to interpret the 'control' differently." Coladarci protested, "I said why? I said you can't do this. I said I've been here 21-20 years last year. And they said well, it's not up to us. It's all corporate. And we're going to interpret the contract differently."

A few days later, she asked Gotthard if these changes would affect her pension. She was told no. When Coladarci asked when this would start, Gotthard replied, "For you, August 1." But Coladarci kept "bugging" Aikens about this matter and saying “you can’t do this to me.” Aikens replied that “it’s not up to me, it’s corporate.” When for the first time, Coladarci failed to see the uniform allowance paid out in September, Gotthard simply told her that she would not be receiving it. However, as a result of her persistence in bugging Aikens, in September, Respondent increased her control hours from 16 to 20, and with the exception of the uniform allowance, she began again receiving full-time benefits. All throughout this entire time, Coladarci's actual hours worked had not changed as she explained. She is considered part-time despite working full-time hours.

At Respondent Wethersfield, similar changes occurred. Evidence provided at this home was offered by two CNAs, Gail Blair and Pauline Dunchie-Legg (herein Dunchie).

Dunchie has worked at Respondent Wethersfield facility since 1995 and is also a long-time union delegate. She explained that at Wethersfield the term "in the book" refers to hours that are used to prorate one's benefits. Dunchie had 32 hours "in the book" in 2010. Dunchie was "in the books" for 24 hours from 2006 through 2008 yet worked 40 hours a week and received the same benefits as a "full-time" employee. She testified that in 2010 she began hearing that, perhaps since 2009, Respondent was basing benefits not on hours actually worked but on hours "in the books." When this matter came to her attention, she raised it with Larry Condon, then the administrator at Wethersfield. In August 2010, she approached him in his office and told him that she had learned that employees were not receiving pay for the holiday. Condon said that he knew and that the Union had filed grievances already.

Dunchie believed that there was a change concerning the home's interpretation of "in the books." According to Dunchie, part-time employees lost benefits, some entirely and others lost in prorated amounts. Dunchie testified that these changes affected all of the unit employees and that about 20 or more CNAs at Wethersfield lost or had their benefits reduced as a result of these changes.

For example, Dunchie testified that when she was "in the book" for 32 hours in 2010, but working 40 hours, she received a full-time benefit for working on a holiday, 8 hours of time and a half-pay for working, and an additional 8 hours pay. However, since the 2010 change, she receives a prorated "extra" benefit of only 6.4 hours for a holiday rather than eight hours. It appears that Respondent began prorating these benefits using as its baseline the hours "in the book": 6.4 is 80 percent of 8. Dunchie explained that on July 4, 2009 she received 8 hours holiday pay for not working the holiday, but now only employees with 40 hours "in the books" receive that benefit. Employees with less than 40 hours "in the books" have that benefit prorated.

Dunchie testified that in July 2010 Blair reported to her that Condon had told Blair that she was no longer getting any benefits because she was "in the books" for only 16 hours. Blair has regularly worked 40 hours a week for many years. After Dunchie spoke to management on numerous occasions, Blair's additional 24 "in the books" hours were restored.

CNA Gail Blair testified that since 2007 she has been "on the books" for 24 hours, regularly scheduled but that she has always averaged 40 hours or more per week. Blair, who started working as a CNA in 2003, was laid off by Wethersfield in 2006. When she returned after the layoff she was given 24 hours "on the books," yet actually worked 40 hours per week. Blair testified that in 2006 she received full benefits (vacation, sick time, etc.) as an employee "on the books" for 40 hours.

Blair began to experience changes on July 4, 2010 when she did not receive her proper "holiday hours" for not working. In previous years, if she did not work the holiday she would receive 8 hours pay. Her records revealed that just months before July 4, 2010 she had received 8 hours of pay for not working on Easter and Memorial Day 2010. When she discovered that her pay was short for the July 4, 2010 holiday, she spoke to Condon regarding this matter, but he merely suggested that she "take it up with the Union."

Many months later, after a grievance had been filed, Blair was paid 4.8 hours. She testified that she worked the July 4, 2011 holiday and for the first time in over a year received time and a half pay for working, but only 4.8 "holiday hours" in addition rather than the 8 she had received in years prior to 2010. It appears that since July 2010, Blair only receives 4.8 hours for not working a holiday. She has never received an explanation for this reduction in her benefits. Clark testified that she only learned from attending the instant hearing that

Respondents had begun reducing the prorated amounts for one's "holiday hours" when not working a holiday, as with Blair.

Moreover, when Blair did not receive her yearly uniform allowance in September 2010, the Union filed a grievance. Later, in December 2010, Blair received $180 for her allowance instead of the $300 she had always received. When she asked why she was only receiving $180 instead of $300, she was told by the administrator that she is "only 24 hours on the book."

The above-described changes affected employees on several levels. First, as detailed above, all employees, who were not considered full-time lost their time and a half pay for working on a holiday, including per diems and part-time employees. Second, at Wethersfield (like Danbury), the part-time employees suffered an additional layer. They found themselves losing out on benefits they had long enjoyed as Respondent suddenly began cutting benefits for part-timers they categorized as less than 20 hours "in the book," regardless of how many hours those employees actually averaged per week.

On August 9, 2010, Clark filed identical Step 2 grievances against Respondents Wethersfield and Danbury with respect to these issues. The grievances alleged that the Respondent "denied benefits including, but not limited to holidays, personal days, vacation days, sick days, medical benefits, pension, training fund, and uniform allowance to eligible Employees as defined by Article 14, section I." Clark served the grievances separately by faxing them to each facility. Clark testified without contradiction that the Union had received no prior notice of any of these changes. As noted previously, Remillard refused to respond substantively to these grievances, claiming that they had been filed incorrectly simply because Clark listed two nursing home names on a single grievance form. Respondent refused to meet on the grievances.

The Union subsequently filed grievances against both Respondent Wethersfield and Respondent Danbury. The grievances were identical, filed on the same document, addressed to both facilities, alleging that the two centers violated various sections of the contract by denying various benefits to eligible employees. The Union served each center separately with copies of these grievances. Respondents never substantively responded to this issue. I note Remillard in writing refused to process the grievances further because the Union failed to file separate grievances with each center. Remillard's responses in this regard, which are identical for each center, are as follows:

August 30, 2010

Suzanne Clark
Organizer
New England Health Care Employees Union
77 Huyshope Avenue
Hartford, CT. 06106

RE: Grievance Processes for Wethersfield Health Care Center

Dear Ms. Clark:

I am writing in response to your letters dated August 17, 2010, related to how the Union "is disheartened by the employer's refusal to abide by the grievance process."

For purposes of clarity, neither the Center nor I "refuse to hold Step 2 or Step 3 grievance hearings." However, based on the manner in which the Union is requesting meetings, it is our position not to schedule meetings until the Union files for Step 2 and Step 3 hearings correctly.

Please be aware that each Center operates and reviews their respective requests independently, as they are separate entities and employers and operate under separate Collective Bargaining Agreements. As such, the Union needs to provide each Center's Administrator/Regional Human Resources representative with separate grievance form/letter in order to schedule any Step 2 or Step 3 grievances at each location.

What is perplexing is that the Union understands that it needs to file for Arbitrations separately, as evidenced by its recent filing of eight arbitrations, yet it fails to understand or follow its contractual obligations for filing its grievances.

Consequently, your request to have a Step 2 hearing due to the Center's "refusal of the Employer to abide by Article 28 of the Collective Bargaining Agreement and participate in the grievance process...", and all other grievances requested in this fashion, we will not schedule these meetings until the Union files for them correctly, as clearly outlined above.

Thank you for your attention to this matter.
Sincerely,

Edmund Remillard
Regional Human Resources Managers
HealthBridge Management

Cc: Lisa Crutchfield, Senior Vice President of Labor Relations
Larry Condon, Regional Director of Operations
Tom Harris, Administrator
Carmen Boudier, President, NEHCEU District 1199
Almena Thompson, Vice President, NEHCEU District 1199
Paul Fortier, Vice President, NEHCEU District 1199
Anne Fenelon, Organizer

As was the case with the holiday pay and lunch overtime calculation changes, Respondents offered no witnesses or explanations for its decision to change its prior practices with respect to calculation of these various benefits at Wethersfield and Danbury vis a vis on the "books" versus hours worked.

III. Analysis

A. The Alleged Failure of Respondents Healthbridge, Newington, Long Ridge and Westport to adhere to the Collective Bargaining Agreement with respect to the Laundry and Housekeeping Employees

The complaint allegations regarding this conduct relates to the actions of the three centers in May of 2010 when they "rehired" their former employees, who had been employees of HSG for 14 months, as new employees, which resulted in loss of wages, seniority and other contractual benefits.

General Counsel contends that HSG and the Respondents during this period of time co-determined the terms and conditions of employment of housekeeping and laundry employees at Respondents Newington, Long Ridge and Westport facilities, that HSG and Respondents were joint employers with respect to these employees and that these employees remained within the collective bargaining unit recognized by the respective Respondent Centers.

Thus, the principal issue to be determined is whether HSG and the Respondents were joint employers of the laundry and housekeeping employees employed at these three facilities during the "full service" period from February 15, 2009 through May 17, 2010. The test is which of the two employers or both control in the capacity of employer, the labor relations of a given group of workers. Thus, the joint employer concept recognizes that the business entities involved are separate but that they share or co-determine these matters governing the essential terms and conditions of employment. *NLRB v. Browning-Ferris Industries*, 691 F. 2d 1117, 1123 (3rd Cir. 1982).

I conclude that the record evidence establishes that virtually all the terms and conditions of employment of the laundry and housekeeping employees at these facilities during this period of time was determined by the collective bargaining agreement between Respondents and the Union, which Respondents imposed upon HSG and which HSG agreed to and, in fact, did apply to these laundry and housekeeping employees.

In these circumstances, I find it hard to imagine any clearer evidence that, in fact, the Respondents co-determined the terms and conditions of employment of these employees for the 14 months that they were employed by HSG. The employees received the same wages as they did when employed by the centers, the same or equivalent benefits, utilized the same seniority and were subject to the same grievance procedure, all of which were encompassed in the contracts between the Respondents and the centers, and which terms Respondents required HSG to apply to the employees as set forth by Respondents' contracts with the Union.

Moreover, it appears that HSG hired all of the former employees of the centers without any interviews and without following HSG's normal procedures of interviewing employees for positions, conducting background checks or providing them with HSG's handbook.[28]

Therefore, I conclude that Respondent Healthbridge along with each of the Respondent Centers were joint employers with HSG for the "full service" period of the laundry and housekeeping employees at the three centers since Respondent and HSG shared and co-determined the matters governing the essential terms and conditions of employment of these employees. *G. Heileman Brewing Co.*, 290 NLRB 991, 999-1000 (1988), enfd. 879 F.2d 1526, 1531 (7th Cir. 1989); *Executive Cleaning Services, Inc.*, 315 NLRB 227, 235 (1994), enf. denied 67 F.3d 446(2nd Cir. 1995).[29]

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[28] The only exception to this practice, insofar as the record discloses, was the only employee hired by HSG during this period, who had not been a former employee of any of the Respondent Centers, Marvin Williams. Notably, Williams, who was hired in late 2009, went through HSG's normal interviewing process and unlike the former employees of the centers, who HSG hired in February of 2009, filled out all the HSG application forms and received and signed for a copy of the HSG handbook.

[29] I recognize that the Board's *Executive Cleaning*, supra has been reversed by the Second Circuit. Nonetheless, I am bound to follow Board law until it is reversed by the Supreme Court, even where it is contrary to Circuit Court precedent in the Circuit where the unfair labor practice

Continued

Respondent conveniently ignored *Heileman Brewing*, supra and the Board's *Executive Cleaning* decision and instead rely on *Summit Express Inc.*, 350 NLRB 592, 617 (2007), wherein the Board agreed with the judge's conclusion that no joint employer relationship existed. The judge observed, therein, that "each case that finds joint employer status, however, relies on continuing elements of supervision and control of labor relations – not an initial establishment of terms and conditions of employment that simply continue what had gone on before." Thus, the contractor, there, presumably was free to change the terms of employment if it so chose at any future time. In fact, the agreement between the contractor and the employer stated future wages of the contractor would be determined by negotiations between the contractor and employer. Significantly, the judge in *Summit Express* did discuss *Heileman Brewing*, supra and distinguished it as follows: "Lowery (the contractor) supplied employees to Heileman, but Heileman negotiated with the Union for almost all of the terms and conditions of employment of the Lowery employees, the Lowery employees retained their seniority with Heileman while they were supposedly Lowery employees," 350 NLRB at 618. The judge observed that the contractor could determine the minimum qualifications of employees although the employer could reject them and subsequent adjustment of wages would be negotiated. He concluded that "I find nothing that indicates that the ability to reject employees or a procedure of co-determination of future wages, without more, suffices to establish a joint employer relationship." Id at 618.

Here, as in *Heileman Brewing*, Respondents negotiated for almost all of the terms and conditions of employment with the Union for the HSG employees, and the HSG employees retained their seniority with Respondents while they were employed by HSG.

I, therefore, find *Heileman Brewing*, supra (and *Executive Cleaning*, supra) more dispositive precedent and find that *Summit Express*, supra is easily distinguishable, as detailed above.

My conclusion that a joint employer relationship existed between the Respondents and HSG during this period is fortified by several other factors.

Here, unlike all the prior cases discussing this issue, which have been detailed above, HSG previously (i.e. for several years prior to February 17, 2009) had been the subcontractor providing supervisory services to the Respondents' employees. Thus, when the employees were subcontracted and became HSG employees in February of 2009, there was no change in their supervision, which both before and after the "full service" period had been performed by

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takes place. *Manor West, Inc.*, 311 NLRB 655, 667 fn. 43 (1993). Even apart from that issue, the facts in *Executive Cleaning* are distinguishable from the facts here, as well as from the facts in *Heilemen Brewing*, supra. The judge in *Executive Cleaning* relied on the involvement of the contractor (AT&T) in the negotiations for the contract with the union that the contractor (ECS) ultimately signed. However, during these negotiations between AT&T and the Union, an agreement was reached that the contractor would pay lesser rates than in the union contract, but here would be in a catch-up in the next agreement. No such catch-up provision was provided for in the contract signed by the contractors. The Court in reversing the Board noted this fact and observed the "Board's conclusion that AT&T negotiated labor rates for ECS employees is contrary to the Court's own specific findings of fact, 67 F.3d at 449 and 451. Thus, here, unlike *Executive Cleaning*, supra, the labor rates for the HSG laundry and housekeeping were negotiated by Respondents and the Union and imposed upon HSG as in *Heileman Brewing*, supra.

HSG supervisors. Therefore, the absence of day-to-day supervision of employees by Respondents during this time had little significance, since both before and after the transition when the employees were admittedly employees of Respondents, they were directly supervised by HSG personnel.

The record established that from the perspective of the employees, the subcontracting was little more than a payroll transfer with virtually no change in their terms and conditions of employment. Indeed, that is what the employees and the Union were essentially told when the subcontracting was announced and was how the officials of HSG viewed the significance of the "full service" period. Thus, the record establishes that in Remillard's letters to the Union on February 5, 2009, he announced that the respective centers would be subcontracting bargaining unit work within the housekeeping and laundry departments. The letter further noted that HSG will be assuming operations, including staffing of the departments, and "agrees in advance to retain the employees and recognize all the rights including seniority under the current collective bargaining agreement." The letter added that HSG would be in contact with the Union "regarding their transition plan. We look forward to your cooperation during this transition period."

As promised in Remillard's notification, HSG by letter from Fishberg notified the Union that effective February 15, 2009 the housekeeping and laundry employees at the centers "will be transferred to the payroll" of HSG. The letter further assures the Union that HSG "will transfer all employees to our payroll with their seniority dates, accrued benefits and job status intact. HSG will make all contributions to specified Union funds based on earnings from February 15, 2009 and forward. HSG also agrees to all terms and conditions negotiated and agreed to between Local 1199 and the respective centers. This change will have no impact on employees' wages and benefits."

These letters, which accurately characterizes the actual events that occurred during the "transition" or "full service" period *vis a vis* employees' terms and conditions of employment, establish that the subcontract to HSG was in effect little more than a transfer of payroll and that the laundry and housekeeping employees continued to be jointly employed by HSG and Respondents during this "transfer" or "full service" period.

It is true, as Respondents point out, that there were some changes in the terms and conditions of employment after the subcontracting, but these changes were minor and insignificant. The only change that seemed to be of any significance was the loss of the direct deposit, which service had been provided by the centers, but which was not offered by HSG. Notably, this benefit was not mentioned in the collective bargain agreements between the Union and the respective centers, so HSG was not obligated to and did not provide it to the employees that were transferred to its payroll.

Further, the evidence discloses the health coverage was provided to the employees was not identical since HSG used a different carrier. However, HSG agreed and did provide "equivalent" coverage to these employees, and where employees had to pay additional co-pays for prescriptions or doctors' visits, over and above to what they had paid while employed by the centers, HSG reimbursed them for the differences.

Finally, while HSG continued to utilize the grievance procedure set forth with the centers with respect to grievances filed by or on behalf of laundry and housekeeping employees, the Step 2 and Step 3 personnel were different. Thus, prior to the subcontracting, Step 2 and Step 3 of the grievance procedure would be directed to the administrator of the center and to Remillard of Healthbridge (acting on behalf of each center), respectively. After the subcontracting, these

steps were directed to HSG officials.

I conclude, as noted, that these changes in employment conditions of the employees were minor and insubstantial and do not detract from my conclusion stated above. The subcontracting in 2009 was little more than a payroll transfer *vis a vis* its affect on employees' employment conditions.

This conclusion is fortified by evidence of how the "transition" of the employees back to the centers was handled. The letters given to employees at each center by HSG notified them that as of May 17, 2010 they will no longer by employed by HSG. The letter to Respondent Newington employees added the following sentence. "Payroll services will not be provided for Newington Center." This letter accurately encapsulated the significance of HSG's services while the employees were employed by HSG. HSG was little more than a "payroll service" during this period.[30]

Additional support for this conclusion can be found in the testimony of various HSG officials concerning what they were told by Fishberg or other HSG representatives concerning the transition back to employees of the centers. Glaser was told by District Manger Ricci that the employees at Respondent Westport would be terminated and that Respondent Westport was going to be hiring them back. Ricci informed Glaser that the "payroll is going back to Healthbridge" and that Healthbridge is taking the "payroll back" and they're going to be their employees. Ricci further explained that the employees would be filling out new applications and the center is going to hire them back.

Similarly, Owusu was told by Crane, his district manager, that the employees of Respondent Long Ridge would no longer be on HSG's payroll as of May 17, 2010 and that the employees would be going to the "payroll of the home." Finally, Crane was told by Fishberg that HSG was terminating the employees at Respondent Long Ridge and that he should report to the facility to help with the transition back to "Long Ridge of Stamford."

Respondent argue in this regard that the employees were terminated by the centers in February of 2009 and that they were free to treat them as new employees when they were rehired in May of 2010 after the cancellation of the subcontract. However, this statement misrepresents the record. No probative evidence was adduced that employees were terminated by any of the centers in February of 2009 when the subcontracting was announced and which was, as I detailed above, little more than a payroll transfer *vis a vis* employees' terms and conditions of employment. Respondent relies on a letter handed to Myrna Harrison on May 29, 2010, an employee of Respondent Westport, who had been employed by HSG but was not rehired by Respondent Westport. When Harrison protested Respondent Westport's failure to offer her a job in May of 2010 to Coleman, she asked for a paper about her employment status. Coleman returned with a letter signed by Jeanette Quinteros, payroll/benefits coordinator, which stated that Harrison was employed by Westport Health Center starting in 12/13/89 as a housekeeper and that she "was terminated on 2/15/09." Neither Quinteros nor Coleman testified, so no evidence was adduced as to how or why or on what basis Quinteros wrote that Harrison was "terminated" by Respondent Westport on February 15, 2009. Further, no other witnesses from Respondents were presented, and no documentary or other evidence was adduced that Respondents terminated any of the employees of any of the centers in February of

[30] Except for the supervisory services that it had been performing for the centers, both before and after the "transition," which the employees were admittedly employees of Respondents.

2009 or indeed at any time.

To the contrary, as described above, the evidence disclosed above that the Union and the employees were not informed by either HSG or the Respondents that the employees were going to be terminated by the Respondents but only that they would be subcontracted to HSG, that the employees would be transferred to the payroll of HSG and that all conditions of employment under the union contract would be the same for all employees as it had been while employed by Respondents.

I also rely in part on some of the evidence presented by General Counsel concerning grievance processing during the "full service" period. Anthony Lecky, a union delegate and housekeeping employee, filed a grievance with Durkovic, administrator at Respondent Long Ridge, alleging that HSG failed to pay him for time spent on union business. Lecky complained to Durkovic about HSG's failure to pay him for this time. Durkovic told him this was "her building" and "if there are changes, she wants to know." She promised to look into the matter and to get back to them. After she did not, Atkinson met it Durkovic and handed the grievance to her, who accepted it and said that she was still looking into it.

Atkinson also approached Owusu and Crane about the issue, who indicated to Atkinson, that HSG would not pay Lecky for the time involved since it didn't involve HSG business but rather union business involving other than laundry and housekeeping employees.[31] This evidence is demonstrative that Durkovic, the Respondent Long Ridge administrator, did at least have some involvement in the grievance process concerning Lecky's grievance against HSG, showing at least co-determination of working conditions by Respondent Long Ridge with HSG of working conditions of the employees.

Similarly, the Parks-Hill grievance also demonstrates co-determination of working conditions of HSG. Parks-Hill, after being transferred to HSG's payroll in February of 2009, lost her regular hours at HSG as a result of a layoff at HSG in April of 2009 and was reduced to per diem status. She asked to be bumped into the nursing department and obtain her regular hours. The Union met with Administrator Durkovic about the issue. While initially Durkovic rejected the request, after being informed by the Union that the contract required Respondent Long Ridge to use her seniority to bump into nursing and allowed Parks-Hill to bump into nursing for a regularly scheduled position. This incident demonstrates that Respondent Long Ridge permitted Parks-Hill, an HSG employee, to use her seniority at HSG as well as at Respondent Long Ridge to bump into a CNA position at Respondent Long Ridge.

Also, Parkmond, HSG's account manager at Respondent Newington, when he had an opening for a housekeeper position in June of 2009 used a Respondent Newington form to post for this position and posted for the job at the facility to Respondent Long Ridge's employees, even though HSG was the putative employer at the time.

The Franz Petion grievance, I find, to be the most significant *vis a vis* this issue. There, Petion, who was a housekeeping employee on HSG's payroll, applied for a posted position in the dietary department at Respondent Westport. He was initially denied the position but after a grievance filed and processed in April of 2009, Petion was successful at the third step and received the position in dietary since Respondent Westport determined that he had more seniority than the person, who had been awarded the position. This incident demonstrates that Respondent Westport counted his seniority both while being employed by Respondent Westport

[31] Lecky as a union delegate represents employees in all departments.

and by HSG in awarding him the position in dietary. More importantly, after Petion won his grievance (having Coleman's decision reversed), he met with Coleman. Coleman, obviously somewhat miffed about being reversed on the grievance, told Petion that his pay would be cut to $12.80 per hour from $15.65 when he transferred to dietary. After Petion complained to Remillard, this decision was reversed, and Petition's pay was not reduced.

However, as Coleman did not testify, no explanation was offered as to why she sought to cut Petion's pay to $12.80 per hour. In the absence of any such explanation, I find it likely that Respondent Westport, even at that time, April of 2009, was contemplating or even had decided that it would be hiring back the laundry and housekeeping employees but as new employees, thereby, reducing their pay to $12.80 per hour. It appears to me that Coleman reasoned that since Petion was a housekeeping employee at the time of the transfer to dietary and would have been reduced to $12.80 per hour had he remained a housekeeping employee, he should be reduced to that level when he transferred to dietary. While Remillard overruled this decision of Coleman, it, nonetheless, demonstrates to me, as I have observed above, that Respondents were contemplating the rehire of the subcontracted employees as new employees as far back as April of 2009 and further that the decision to subcontract these employees in the first place was temporary in nature.

This latter conclusion is further supported by other record evidence, which was not contradicted by any evidence from any officials of Respondents. I have found that in April of 2010 when Coleman was discussing accrual issues with Ricci of HSG, Ricci informed her that he didn't think that it was going to be a problem because the employees were going to be transferred back to the Westport payroll, and, therefore, the time would go back on the books when they got transferred back over to Westport.

Further, when Simone discussed the direct deposit issue with Parkmond, the HSG account manager at Respondent Newington, Parkmond told Simone several times starting in March or April of 2009 that the employees would eventually be going back to Respondent Newington's payroll, so they would be getting direct deposit then.

Finally, HSG's District Manager Crane in charge of Respondent Long Ridge's facility told Lecky in early 2010 that maybe the employees would be going back to becoming employees at Long Ridge.

I find the above evidence sufficient to conclude, particularly in the absence of any contradictory evidence from Respondents' representatives, that Respondents considered the subcontracting to be temporary and had contemplated, if not decided, to return the employees to the employ of the centers.[32]

This conclusion also reinforces my previous finding that the transfer of Respondents' laundry and housekeeping employees in 2009 was essentially a payroll transfer without much other significance as to employees' terms and conditions of employment. I also note in this connection the failure of Respondents to present any witness to explain the reasons for their decisions to subcontract the work to HSG in the first place, to cancel the subcontract in 2010 and/or to rehire the employees as new employees in May of 2010. I once again find it appropriate to draw an adverse inference against Respondents and conclude that if they had

[32] In this regard, I believe it is appropriate to draw an adverse inference from the refusal of any of Respondents' representatives to testify about this issue. *International Automated Machines*, 285 NLRB 1122, 1123 (1987).

testified, their testimony would not be supportive of Respondents' version of the events. *International Automated*, supra.

Accordingly, based on the forgoing analysis, I conclude that Respondents and HSG co-determined the terms and conditions of employment of the laundry and housekeeping employees at the three centers during the "full service" or "transition" period. *Heileman Brewing*, supra; *Executive Cleaning*, supra. Therefore, as of May of 2010, these employees were still employees in the bargaining unit, subject to all the terms of the contract and eligible for all contract benefits.

Respondents, therefore, were not free to rehire them as new employees, cut their salaries, reduce their benefits and eliminate their seniority. They must be treated as continuously being employees of the centers, and Respondents' failure to do so is a blatant violation of Section 8(a)(1) and (5) of the Act. I so find.

Respondents' argument that nothing in the contract requires them to rehire the employees with their old salaries and benefits intact misses the point. The employees, although technically "employed" by HSG for 14 months, were still also employed by Respondents. The alleged "hiring" of the employees in these circumstances is in reality a termination and rehire on the condition that the employees are rehired as new employees with a new probationary period and loss of salary benefits and seniority. Such conduct was effectuated without notification to or bargaining with the Union. Respondent has, therefore, violated Section 8(a)(1) and (5) of the Act.

The violations of the Act with respect to Respondents' conduct are based on two separate but related violations of its bargaining obligations to the Union. Respondent has by virtue of reducing benefits of bargaining unit employees modified the contract without the Union's consent. An employer may not modify the contract and, thereby, reduce employee benefits during the contract term other than by mutual agreement or with consent of the Union. *San Juan Bautista Inc.*, 356 NLRB #102 slip op at 3 (2011); *Bonnel/Tredegar Industries*, 313 NLRB 789, 792 (1994), enfd. 46 F.3d 339 (4th Cir. 1995); *Carrier Corp.*, 319 NLRB 184, 192, 199 (1995); *St. Vincent Hospital*, 320 NLRB 42, 45 (1995).

Additionally, an employer is obligated to notify and bargain with the union before it makes any changes in terms and conditions of employment with the union. Respondents have violated its statutory obligations to the Union in both respects, here, since they both modified the contract without obtaining the consent of the Union and made changes in terms and conditions of employment without notifying and bargaining with the Union.

I would also find, alternatively, that Respondents violated Section 8(a)(1) and (5) of the Act, even absent a joint employer finding between Respondents and HSG. In those circumstances, I conclude that Respondents, nonetheless, have an obligation to bargain with the Union about the terms of their "re-employment" with or "rehire" by the Respondents of these employees. Regardless of the joint employer issue, these employees were not "new" employees in the sense that they were formerly employees of the Respondents, who had not been terminated but merely subcontracted to HSG for a 14-month period. In such circumstances, I find it more akin to a layoff than a rehire and conclude that Respondents should have notified and bargained with the Union over the terms of their employment with Respondents. The fact that the contract does not specifically require Respondents to rehire employees at contract rates, who had been subcontracted out, is not dispositive. Neither the contract nor any other evidence established that the Union waived its rights to bargain about the terms and conditions of its employees, whom it "rehired" after they returned from their employment with the

subcontractor. *Provena St. Joseph*, 350 NLRB 808, 815 (2007).

B. The Failure to Rehire Harrison and Daye

It is undisputed that although Respondents offered positions to 46 of 48 laundry and housekeeping employees, who had been employed at the centers, Respondent Westport failed to offer a job to Harrison or Daye. It provided no witnesses and adduced no evidence as to why it failed to offer them employment.

Based on my findings above, this conduct is unlawful under several alternative but related theories. Since the Respondents were joint employers with HSG, Daye and Harrison were still in the employ of Respondents, subject to the terms of the agreement. In such circumstances, the failure to rehire them is akin to a layoff, and in such circumstances, Respondents were obligated to notify and to bargain with the Union before laying these employees off. *Kieft Bros. Inc.*, 355 NLRB #19 (2010); *Pan American Grain Co.*, 343 NLRB 318 (2004).

Also, since Respondent Westport was a joint employer with HSG, as I have found above, the collective bargaining agreement between the Union and Respondent Westport was still in effect. Therefore, the contractual just cause provision in the agreement was applicable to Respondents' actions in refusing to hire them, which was tantamount to a layoff or termination since they were employees of Respondents. Since Respondents adduced no evidence that they complied with the just cause provision of the contract, the refusal to hire Harrison and Daye can be found to be violative of Section 8(a)(1) and (5) on that basis as well, I so find.

C. The March 2010 Layoff by Respondent Long Ridge and Related Information Requests

It is undisputed that in Mach of 2010 Respondent Long Ridge instituted a layoff of CNAs by removing them from the schedule for certain days or shifts. Respondent Long Ridge engaged in this conduct despite the fact that the collective bargaining agreement between it and the Union required 45 days notice before laying off employees and despite the fact that the Union had expressly declined the request made by Respondent Long Ridge and Respondent Healthbridge that the Union waive this contractual right in a meting in late February of 2010.

Accordingly, there can be no doubt that Respondent Long Ridge and Respondent Healthbridge have violated Section 8(a)(1) and (5) and 8(d) of the Act by failing to adhere to the express terms of their contract with the Union. *Carrier Corp.*, supra; *Oak Cliff-Golman Co.*, 207 NLRB 1063 (1973).

Respondents argue, however, that no violation should be found inasmuch as Respondents rescinded the layoff after the Union filed a grievance protesting the Respondent's contract violation. Respondents further agreed to make the employees whole for their violations of the contract and were still engaged in discussion with the Union concerning the amounts due to the affected employees. Finally, they assert that Klimas, Respondent's administrator, is no longer employed by Respondent Long Ridge and that the Union never brought the alleged pay disparities or the need for further documentation to Remillard's attention, even though Remillard had handled the resolution of the grievance at Step 3.Therefore, Respondents contend that since "the Union never made the person who committed to make the employees whole and could remedy any outstanding pay issues aware of those issues…General Counsel had failed to prove that Respondent Long Ridge violated the Act regarding the alleged layoff."

Respondents' arguments, as outlined above, are totally without merit. They have no

bearing on the ultimate issue of whether Respondents violated the Act by failing to adhere to the explicit terms of the contract, which it undisputedly failed to comply with. Respondents seem to be arguing that since they rescinded the layoff and agreed to make the employees whole, no violation should be found, in effect contending that they have cured the violation, warranting no finding that they have violated the Act. This argument is clearly contrary to established Board law as Respondents have fallen far short of its burden to sufficiently repudiate unlawful conduct as to justify a dismissal of the complaint allegation. *Claremont Resort & Spa*, 344 NLRB 832 (2005); *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Here, Respondents did not admit that it had engaged in unlawful conduct,[33] did not give assurances that in the future that employees would not be interfered with and, indeed, did not even make a timely or unambiguous notification to their employees of their repudiation of the unlawful conduct.

The record also establishes that the Union made several information requests to Respondents in writing in March 2010 and orally by Clark in June and early July of 2010. The Union was requesting information clearly relevant to the processing of its grievance concerning the improper layoff of employees and the proper amount of backpay due to remedy Respondent's contract violations.

Respondents ignored the Union's information requests until June 25, 2010 when Klimas provided some responsive information, which was clearly not sufficient to meet the Union's requests as Clark explained to Klimas in early July of 2010. It was not until July 22, 2010 that Respondents supplied fully the information requested by the Union.

It is well-settled that an employer is obligated to supply relevant information to the union in a timely manner. Absent evidence justifying an employer's delay in furnishing such information, such a delay is violative of the Act since the union is entitled to the information at the time it made its initial request, and it is the employer's duty to furnish it as promptly as possible. *Woodland Clinic*, 331 NLRB 735, 737 (2000); *Monmouth Care Center*, 354 NLRB #2 ALJD slip op at 41 (2009).

Here, Respondents have provided no explanation for their delay in providing the requested information, Respondents do make the argument that Klimas is no longer employed by Respondent Long Ridge and Clark admits that she did not bring the alleged pay dispute or the need for further documentation to Remillard's attention even though he handled the resolution of the Step 3 grievance. Therefore, Respondents argue that the "Union never made the person who committed to make the employees whole and could remedy any outstanding pay issue aware of these issues." I find this purported explanation for the delay to be totally devoid of any substance. The fact is that Klimas was still employed at Respondent's at least though July of 2010 as Clark continued to deal with Klimas concerning these issues until the Union finally received the information requested on July 22, 2010. It was not incumbent upon Clark or the Union to contact Remillard about the issues since it was sufficient to make the request to Klimas. Moreover, in fact, Clark did mention the issue to Remillard when she met with him on the Step 3 grievance on May 6, 2010, wherein she reminded him that the Union was still waiting for the information requested, some two months earlier. Thus, even by that time, Respondents had unreasonably delayed submitting the requested information. *Woodland Clinic*,

[33] Indeed, when Remillard in Respondents' May 26, 2010 letter to the Union confirmed their willingness to rescind the layoffs and make the employees whole, he advised that "the Center's willingness to this non-precedent setting action does not constitute an admission that its previous decision to remove members from the schedule constituted a violation of the collective bargaining agreement."

supra at 737 (unexplained week's delay unreasonable and unlawful); *Monmouth Care Center*, supra, ALJD slip op at 42 (six-week delay unreasonable); *Beverly California Corp.*, 326 NLRB 153, 157 (1998) (two-month delay unlawful); *International Credit Service*, 240 NLRB 715, 718 (1979) (unexplained delay of six weeks unreasonable).

Accordingly, based on the foregoing, I conclude that Respondents have violated Section 8(a)(1) and (5) of the Act by failing to respond promptly to the Union's information requests.

D. Respondents' Discontinuance of Paying Time and a Half for Overtime

Prior to 2009 or early 2010, employees at all of Respondent Centers received time and a half pay when working on holidays, no matter how many hours a week they had worked or whether the employee was considered full-time, part-time or per diem.

Sometime in late 2009, Respondents began ceasing the payment of such holiday pay to at least some part-time employees and for per diem workers. There is no dispute that Respondents did not notify or bargain with the Union over this clear change in the terms and conditions of employment of the bargaining unit employees.

General Counsel alleges that Respondents have violated its bargaining obligation to the Union by failing to so notify and bargain with the Union about this change in their working conditions. I agree.

Respondent have adduced no evidence of any reasons or justification for instituting these changes. It produced no witness on this issue. While Remillard did respond to the Union's grievance by citing contractual provisions, allegedly supporting Respondents' actions, that position is undermined by record evidence contradicting this alleged defense. Thus, Remillard in his responses appears to be relying on the contractual provision authorizing holiday pay for part-time employees, who work 20 or more hours per week. However, evidence from Dewkett establishes that she did receive her holiday pay for Labor Day in September of 2010 as in the past. Dewkett worked over 20 hours per week but had only 15 regularly scheduled or control hours. It appears that Respondents seem to be applying the 20-hour requirement in the contract to hours scheduled (as opposed to hours worked), but again, in the absence of any testimony from Respondents' witnesses, their position and justification for the change is uncertain.

What is clear, however, is that there has been a change from prior practice, the Union was not notified about it nor given the opportunity to bargain about it and that the Union has not waived its rights to bargain about this subject. Respondents have, thereby, violated Section 8(a)(1) and (5) of the Act. *Provena St. Joseph*, 350 NLRB 808, 810-816 (2007).

E. The Changes in Meal Time – Overtime Calculation

It is undisputed that at various times in 2010, all of Respondent Centers stopped including half-hour paid periods for meal breaks in calculating daily overtime. This is admittedly a change from prior practice and was also effectuated without notifying or bargaining with the Union about this change in employees' terms and conditions of employment.

As was the case with the Respondents' change in holiday pay, detailed above, Respondents have once more failed to produce any witnesses to explain their actions or why they departed from past practice. It appears from the timing of the decision and other evidence that the decision may have had relation to their institution of the new policy to require employees to state whether or not they had an "uninterrupted break" when they punch out for

the day. Nonetheless, in the absence of any testimony from Respondents, it is difficult to determine why it decided to change its prior practices.

Respondents argue in their brief that they were privileged to implement this admitted change in past practice based on the explicit terms of the contract. They argue that based on the contract's terms overtime is to be paid at time and a half for "work in excess of eight (8) hours actually worked in excess of eight (8) hours per day." Relying on definitions of work in Webster's Dictionary and Black's Law Dictionary, Respondents argue that meal or break time cannot be construed as "work actually performed" for the half-hour meal period. However, this interpretation of the contract is clearly contrary to past practice, where Respondents have always paid employees for this time, whether or not they took their breaks. Thus, the contract terms are ambiguous and susceptible to varying reasonable interpretations. Where, as here, Respondents have chosen to ignore past practice and to implement this change without bargaining with the Union, they have violated the Act, unless they have met the stringent standard of establishing that the Union has clearly and unmistakably waived its rights to bargain over this subject. *Provena St. Joseph*, supra. I find that they have failed to demonstrate such a clear and unmistakable waiver, and Respondent have, thereby, violated Section 8(a)(1) and (5) of the Act by unilaterally instituting this change.

F. The Changes in Eligibility for Certain Benefits at Respondents

At Respondents Wethersfield and Danbury, it is undisputed that in mid-2010 these two centers changed the way that they determined that eligibility for part-time employees to receive various prorated benefits, such as holidays pay, personal days, vacation days, sick days and uniform allowance. There, Respondents implemented a new policy once again without notifying or bargaining with the Union that these benefits would henceforth be available only to employees, who were scheduled for over 20 hours per week, regardless of the actual hours worked. In the past, employees were eligible for and received these benefits based upon their hours actually worked, regardless of their scheduled hours.[34]

Once more, Respondents have failed to offer any explanation for its deviation from prior practice or its clear modification of the expressed terms of the contract. As noted above, Respondents produced no witnesses or evidence with respect to these issues. Here, the record does not even include substantive responses to the Union's grievances with respect to these issues since Respondents made only procedural objections, contending that the Union had not properly filed its grievances separately against each center.

The only record evidence of any explanation by Respondents for its actions comes from comments made by the administrators to employees, who complained about the changes. In this regard, Pescatello, Respondent Danbury's administrator, informed employee Coladarci that Respondent Danbury was going to interpret the "control" hours differently. When Coladarci protested that she had been there 20-21 years and that Respondent Danbury can't do this, Pescatello replied, "It's not up to us, it's all corporate. And we're going to interpret the contract differently." Similarly, when Coladarci complained to DNS Aikens about these changes, Aikens responded to her, "It's not up to me, its' corporate."

[34] At Respondent Wethersfield, the employees' scheduled hours were known as "on the books" hours while at Respondent Danbury, it was referred to as "control hours." At both facilities, however, employees would work more than their "control" or "on the books" hours and would receive prorated benefits based on the amount of hours actually worked.

When Dunchie complained to Respondent Wethersfield's administrator, Larry Condon, Condon informed her that he knew about it and the Union had filed grievances already. When Blair complained to Condon about not receiving her proper holiday pay as a result of the change, Condon replied that she should "take it up with the Union."

Notably, in this instance, Respondents has not even advanced any arguments in their brief as to why they made this change or on what basis their conduct can be found to be justified or lawful.

I, therefore, find that Respondents Healthbridge, Wethersfield and Danbury have violated Section 8(a)(1) and (5) on two grounds with respect to this conduct. They have unlawfully modified the contract[35] without the Union's consent in violation of Section 8(a)(5) and 8(d) of the Act. *Carrier Corp.*, supra; *Oak Cliff-Golman*, supra. I also conclude that Respondents have unilaterally changed terms and conditions of employment of their employees at these two centers without notifying and bargaining with the Union also in violation of Section 8(a)(1) and (5) of the Act. *Provena St. Joseph*, supra; *Champion Parts Rebuilders*, 260 NLRB 731, 733-34 (1982).

G. The Threat to Call Police

As noted above, I have found that Respondents Westport and Healthbridge unlawfully refused to rehire Harrison and Daye on May 17, 2010. On that date, as also related above, Respondents notified employees that since they had been terminated by HSG, they needed to reapply for jobs with Respondent Westport, fill out new job applications and they would be hired as new hires with pay at $12.80 per hour. The employees were understandably upset at having to reapply for their jobs as new employees with consequent substantial pay cuts and losses of benefits and seniority. They were discussing whether or not to comply with Respondent's demands that they fill out new applications and accept the new (unlawful) conditions for their acceptance of a job, including that they should consult with the Union before deciding whether to comply. In these circumstances, Coleman's response to these discussions that the employees must fill out the applications or leave the premises, and if not, she could call the police was a clear response to their protected conduct. Coleman repeated that threat to Harrison after she had been permitted by Coleman to return to the facility to drop off an Avon package to a fellow employee.

General Counsel argues, and I agree, that Coleman's comments were in response to employees' protected conduct of discussion how to react to Respondents' requirement (unlawful as it turns out) to file new job applications for hire as new employees and were coercive and violative of Section 8(a)(1) an the Act. *Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006).

Conclusions of Law

1. The Respondents are employers within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondents Healthbridge, Westport, Long Ridge and Newington operated as joint

[35] The contracts in effect clearly provide that these benefits shall be received by employees, who work 20 hours or more per week.

employers with HSG during the period of February 15, 2009 through May 17, 2010.

4. Respondents Healthbridge and Westport have violated Section 8(a)(1) of the Act by threatening to call the police in response to employees' protected concerted or union activities.

5. Respondents Healthbridge and Long Ridge have violated Section 8(a)(1) and (5) of the Act by failing and refusing to supply timely and complete information requested by the Union on March 2, 2010, April 12, 2010, May 6, 2010 and July 8, 2010.

6. Respondents Healthbridge and Long Ridge have violated Section 8(a)(1) and (5) of the Act by failing to adhere to the provisions of their collective bargaining agreement with the Union by laying off their employees without providing the Union with a 45-day notice of the layoffs without the Union's consent.

7. Respondents Healthbridge, Wethersfield and Danbury violated Section 8(a)(1) and (5) of the Act by failing to adhere to provisions of their collective bargaining agreement with the Union by implementing a new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

8. Respondents Healthbridge, Long Ridge, Wethersfield, Danbury, Newington, West River and Westport have violated Section 8(a)(1) and (5) of the Act by unilaterally changing terms and conditions of employment of their employees by discontinuing their practice of including all time encompassed by lunch and breaks in tallying their employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by their employees.

9. Respondents Healthbridge, Newington, Westport and Long Ridge have violated Section 8(a)(1) and (5) of the Act by modifying the contracts' terms of their laundry and housekeeping employees without the Union's consent in that they conditioned employees' rehire on their condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of their employees without notifying or bargaining with the Union over such changes and by failing to bargain with the Union concerning the terms of their re-employment with Respondents after being subcontracted to HSG.

10. Respondents Healthbridge and Westport have violated Section 8(a)(1) and (5) of the Act by laying off and/or refusing to hire their employees, Myrna Harrison and Newton Daye, without notifying or bargaining with the Union concerning their decision to lay off these employees or not to hire them and because their layoffs or termination were in violation of the collective bargaining agreement with the Union.

Remedy

Having found that Respondents have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents made a number of unlawful modifications of their contracts with the Union and unlawful, unilateral changes in terms and conditions of employment of their employees, I shall order that Respondents rescind these changes and restore the conditions of employment of their employees to what they had been prior to the

changes.

I shall also order Respondents to make whole the employees for losses of pay and other benefits caused by the unlawful contract modifications and unilateral changes of Respondents.

Additionally, I shall order Respondents Healthbridge and Westport to offer reinstatement to employees, Myrna Harrison and Newton Daye, to their former positions of employment with Respondents Healthbridge and Westport without loss of seniority or pay and to make them whole for any loss of earnings and benefits. Backpay shall be for Harrison and Daye as well as for the other employees, who lost wages and benefits based upon Respondents' unlawful conduct. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

A. The Respondent, Healthbridge Management, LLC, Fort Lee, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in appropriate units in Danbury, Connecticut (Danbury), Stamford, Connecticut (Long Ridge), Newington, Connecticut (Newington), Milford, Connecticut (West River), Westport, Connecticut (Westport) and Wethersfield, Connecticut (Wethersfield).

(b) Threatening to call the police in response to employees' protected concerted or union activities.

(c) Failing and refusing to supply timely and complete information requested by the Union.

(d) Failing to adhere to the provisions of its collective bargaining agreement with the Union by laying off its employees at Long Ridge without providing the Union with a 45-day notice of the layoffs without the Union's consent.

(e) Failing to adhere to provisions of its collective bargaining agreement with the Union by implementing a new eligibility standard for employees at Danbury and Wethersfield regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

(f) Unilaterally changing terms and conditions of employment of its employees at

[36] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Danbury, Long Ridge, Newington, Westport, West River and Wethersfield by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(g) Modifying the contract's terms of its laundry and housekeeping employees at Long Ridge, Westport and Newington without the Union's consent by conditioning its employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of its employees without notifying or bargaining with the Union over such changes and by failing to bargain with the Union concerning the terms of the employees' re-employment with it after being subcontracted to a subcontractor.

(h) Laying off and/or refusing to hire its employees at Westport without notifying or bargaining with the Union concerning its decision to layoff these employees or not to hire them, laying off or terminating its employees in violation of its collective bargaining agreement with the Union.

(i) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of the this Order, offer Myrna Harrison and Newton Daye full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Myrna Harrison and Newton Daye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the layoff or refusal to hire of Harrison and Daye, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(d) Make whole the employees for their loss of wages and benefits that resulted from the unlawful layoff of employees employed by Respondent Long Ridge and that resulted from the unlawful changes in eligibility standards for employees employed by Respondents Wethersfield and Danbury regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of employees employed by Respondents Long Ridge, Wethersfield, Danbury, Newington, West River and Westport in the manner set forth in the remedy section of this decision, plus interest.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Rescind the modification in its contracts covering employees employed by Respondents Newington, Long Ridge and Westport, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to its unlawful modification of the contracts.

(g) Discontinue its practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees employed by Respondents Newington, Westport, Long Ridge, Wethersfield, West River and Danbury.

(h) Rescind its new eligibility standard for employees employed by Respondents Wethersfield and Danbury regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

(i) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate units by it and by Danbury, Long Ridge, Newington, Westport, West River and Wethersfield.

(j) Within 14 days after service by the Region, post at its Fort Lee, New Jersey facility and at its facilities in Danbury, Stamford, Newington, Milford, Westport and Wethersfield, Connecticut copies of the attached notice marked "Appendix A."[37] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent, 710 Long Ridge Road Operating Company II, LLC (Long Ridge), Stamford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

[37] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time, part-time, and per diem/casual service and maintenance Employees, including certified nurses assistants (CNAs), therapy technicians, housekeeping aides, dietary Employees, laundry aides, central supply clerks, relief cooks, unit secretaries, receptionists, medical records clerks, maintenance Employees, Registered Nurses and Licensed Practical Nurses employed by Long Ridge, including any new or expanded locations of Long Ridge, but excluding all other Employees, cooks, guards, other professional employees and supervisors as defined in the Act, as amended to date.

(b) Failing and refusing to supply timely and complete information requested by the Union.

(c) Failing to adhere to the provisions of its collective bargaining agreement with the Union by laying off its employees at Long Ridge without providing the Union with a 45-day notice of the layoffs without the Union's consent.

(d) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(e) Modifying the contract's terms of its laundry and housekeeping employees without the Union's consent by conditioning its employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of its employees without notifying or bargaining with the Union over such changes and by failing to bargain with the Union concerning the terms of the employees' re-employment with it after being subcontracted to a subcontractor.

(f) In any like or related manner, interfering with restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make whole its employees for their loss of wages and benefits that resulted from the modification of the contract terms of its laundry and housekeeping employees and from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind the modification in its contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to its unlawful modification of the contract.

(d) Discontinue its practice of excluding all time encompassed by lunch and breaks in

tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(e) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(f) Within 14 days after service by the Region, post at its Stamford, Connecticut facility copies of the attached notice marked "Appendix B."[38] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

C. The Respondent, 1 Burr Road Operating Company II, LLC (Westport), Westport, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

> All full-time, regular part-time service, and per diem/casual service and maintenance Employees, including certified nurses assistants (CNAs), dietary aides, cooks, head cooks, housekeeping, laundry and maintenance Employees, central supply clerks, scheduler, rehabilitations aides, recreation assistants and receptionists employed by Respondent at its Westport facility, but excluding all other Employees, registered nurses (RNs), social workers, licensed practical nurses (LPNs), and other technical Employees, therapeutic recreation directors, medical records clerks, payroll clerk and guards, professional Employees and supervisors as defined in the Act.

(b) Threatening to call the police in response to employees' protected concerted or union activities.

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[38] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(d) Modifying the contract's terms of its laundry and housekeeping employees without the Union's consent by conditioning its employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of its employees without notifying or bargaining with the Union over such changes and by failing to bargain with the Union concerning the terms of the employees' re-employment with it after being subcontracted to a subcontractor.

(e) Laying off and/or refusing to hire its employees without notifying or bargaining with the Union covering its decision to layoff their employees or not to hire them, laying off or terminating its employees in violation of its collective bargaining agreement with the Union.

(f) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of the this Order, offer Myrna Harrison and Newton Daye full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Myrna Harrison and Newton Daye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the layoff or refusal to hire of Harrison and Daye, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(d) Make whole its employees for their loss of wages and benefits that resulted from the modification of the contract terms of its laundry and housekeeping employees and from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Rescind the modification in its contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to its unlawful modification of the contract.

(g) Discontinue its practice of excluding all time encompassed by lunch and breaks in

tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(h) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(i) Within 14 days after service by the Region, post at its Westport, Connecticut facility copies of the attached notice marked "Appendix C."[39] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

D. The Respondent, 240 Church Street Operating Company II, LLC (Newington), Newington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

> All full-time, part-time, and per diem/casual service and maintenance Employees, including current categories and future new and changed jobs in the service and maintenance bargaining unit including certified nursing assistants, physical therapy aides, housekeeping Employees, central supply clerks, nursing office secretary, secretary-receptionist, receptionists, medical records clerk-receptionist, maintenance Employees, social service designee, therapeutic recreational directors, recreation aides, Registered Nurses and Licensed Practical Nurses employed by Respondent including any new or expanded locations of Respondent but excluding all other Employees, guards, professional Employees and supervisors as defined in the Act.

(b) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its

[39] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(c) Modifying the contract's terms of its laundry and housekeeping employees without the Union's consent by conditioning its employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of its employees without notifying or bargaining with the Union over such changes and by failing to bargain with the Union concerning the terms of the employees' re-employment with it after being subcontracted to a subcontractor.

(d) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make whole its employees for their loss of wages and benefits that resulted from the modification of the contract terms of its laundry and housekeeping employees and from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind the modification in its contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to its unlawful modification of the contract.

(d) Discontinue its practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(e) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(f) Within 14 days after service by the Region, post at its Newington, Connecticut facility copies of the attached notice marked "Appendix D."[40] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as

[40] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

E. The Respondent, 107 Osborne Street Operating Company II, LLC (Danbury), Danbury, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

> All full-time, part-time, and per diem/casual RNs, LPNs, and service and maintenance Employees, including certified nurses assistants, therapy aides, housekeeping employees, dietary employees, cooks, laundry employees, payroll clerks, rehabilitation aides, therapeutic recreation directors, receptionists, and maintenance employees employed by Respondent at its 107 Osborne Ave., Danbury, Connecticut location, but excluding the Director of Nurses, the Assistant Director of Nurses, the infection control nurse, the resident care coordinator, the staff development nurses, the employee health nurses, shift supervisors, unit coordinators, but excluding all other Employees, guards, professional Employees and supervisors as defined in the Act.

(b) Failing to adhere to provisions of its collective bargaining agreement with the Union by implementing a new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

(c) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(d) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make whole its employees for their loss of wages and benefits that resulted from the unlawful changes in eligibility standards, regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind its new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

(d) Discontinue its practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(e) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(f) Within 14 days after service by the Region, post at its Danbury, Connecticut facility copies of the attached notice marked "Appendix E."[41] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

F. The Respondent, 341 Jordan Lane Operating Company II, LLC (Wethersfield), Wethersfield, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem service and maintenance Employees,

[41] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

including certified nurses assistants, porters, activity assistants, housekeepers, dietary aides, cooks, cooks helpers, laundry aides, and maintenance Employees, but excluding all other professional Employees, all technical Employees, all business office clerical Employees and all guards, professional Employees and supervisors as defined in the National Labor Relations Act, employed at the Center, 341 Jordan Lane, Wethersfield, CT 06109.

(b) Failing to adhere to provisions of its collective bargaining agreement with the Union by implementing a new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

(c) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

(d) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make whole its employees for their loss of wages and benefits that resulted from the unlawful changes in eligibility standards, regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind the its new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

(d) Discontinue its practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(e) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(f) Within 14 days after service by the Region, post at its Danbury, Connecticut facility copies of the attached notice marked "Appendix F."[42] Copies of the notice, on forms provided by

[42] If this Order is enforced by a judgment of a United States court of appeals, the words in

Continued

the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

G. The Respondent, 245 Orange Avenue Operating Company, LLC (West River), Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

> All full-time, part-time, and per diem/casual service and maintenance and clerical Employees, including certified nurses assistants, occupational therapy aides, ward clerks, dietary aides, cooks, head cooks, housekeeping aides, laundry aides, assistant maintenance supervisor, recreation aides, physical therapy aides, central supply clerk, billing, collections and accounts receivable clerks and medical records clerks employed by Respondent at its 245 Orange Avenue, Milford, Connecticut facility, but excluding, receptionists, payroll/accounts payable clerks, computer operators, data entry clerks, admissions clerks, licensed practical nurses, registered dietetic technicians, rehabilitation therapy technicians, physical therapy assistants, dieticians, registered respiratory therapists, certified respiratory therapy technicians, speech pathologists, social workers, administrative assistants, marketing director, manager of case management, head receptionist/secretary, executive chef, managerial Employees, confidential Employees, technical Employees and all guards, professional Employees and supervisors as defined in the Act.

(b) Unilaterally changing terms and conditions of employment of its employees by discontinuing its practice of including all time encompassed by lunch and breaks in tallying its employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by its employees.

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the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make whole its employees for their loss of wages and benefits that resulted from the unlawful change of the practices calculating overtime and breaks of its employees, plus interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Discontinue its practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind its new eligibility standard for payment at premium rate for hours worked on holidays by its employees.

(d) On request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

(e) Within 14 days after service by the Region, post at its Milford, Connecticut facility copies of the attached notice marked "Appendix G."[43] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

[43] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 1, 2012.

_____
Steven Fish,
Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in appropriate units in Danbury, Connecticut (Danbury), Stamford, Connecticut (Long Ridge), Newington, Connecticut (Newington), Milford, Connecticut (West River), Westport, Connecticut (Westport) and Wethersfield, Connecticut (Wethersfield).

WE WILL NOT threaten to call the police in response to employees' protected concerted or union activities.

WE WILL NOT fail and refuse to supply timely and complete information requested by the Union.

WE WILL NOT fail to adhere to the provisions of our collective bargaining agreement with the Union by laying off our employees at Long Ridge without providing the Union with a 45-day notice of the layoffs without the Union's consent.

WE WILL NOT fail to adhere to provisions of our collective bargaining agreement with the Union by implementing a new eligibility standard for employees at Danbury and Wethersfield regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

WE WILL NOT unilaterally change terms and conditions of employment of our employees at Danbury, Long Ridge, Newington, West River, Westport and Wethersfield by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT modify the contracts' terms of our laundry and housekeeping employees at Long Ridge, Westport and Newington without the Union's consent by conditioning our employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of our employees without notifying or bargaining with the Union over such changes or by failing to bargain with the Union concerning the terms of the employees' re-employment with us after being subcontracted to a subcontractor.

WE WILL NOT lay off and/or refuse to hire our employees at Westport without notifying or bargaining with the Union concerning our decision to layoff these employees or not to hire them, lay off or terminate our employees in violation of our collective bargaining agreement with the Union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the this Order, offer Myrna Harrison and Newton Daye full reinstatement to their former jobs at Westport or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Myrna Harrison and Newton Daye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the layoff or refusal to hire of Harrison and Daye, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL make whole the employees for their loss of wages and benefits that resulted from the unlawful layoff of employees employed by Long Ridge and that resulted from the unlawful changes in eligibility standards for employees employed by Wethersfield and Danbury regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of employees employed by Long Ridge, Wethersfield, Danbury, Newington, West River and Westport, plus interest.

WE WILL rescind the modification in our contracts covering employees employed by Newington, Long Ridge and Westport, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to our unlawful modification of the contracts.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees employed by Respondents Newington, Westport, Long Ridge, Wethersfield, West River and Danbury.

WE WILL rescind our new eligibility standard for employees employed by Wethersfield and Danbury regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate units by us and by Danbury, Long Ridge, Newington, Westport, West River and Wethersfield.

HEALTHBRIDGE MANAGEMENT, LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

A.A Ribicoff Federal Building and Courthouse
450 Main Street, 4th Floor
Hartford, Connecticut 06103-3022
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3006.

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem/casual service and maintenance Employees, including certified nurses assistants (CNAs), therapy technicians, housekeeping aides, dietary Employees, laundry aides, central supply clerks, relief cooks, unit secretaries, receptionists, medical records clerks, maintenance Employees, Registered Nurses and Licensed Practical Nurses employed by Long Ridge, including any new or expanded locations of Long Ridge, but excluding all other Employees, cooks, guards, other professional employees and supervisors as defined in the Act, as amended to date.

WE WILL NOT fail and refuse to supply timely and complete information requested by the Union.

WE WILL NOT fail to adhere to the provisions of our collective bargaining agreement with the Union by laying off our employees without providing the Union with a 45-day notice of the layoffs without the Union's consent.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT modify the contract's terms of our laundry and housekeeping employees without the Union's consent by conditioning our employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of our employees without notifying or bargaining with the Union over such changes or by failing to bargain with the Union concerning the terms of the employees' re-employment with us after being subcontracted to a subcontractor.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the modification of the contract terms of our laundry and housekeeping employees and that resulted from the unlawful change of the practices calculating overtime and breaks of our employees, plus interest.

WE WILL rescind the modification in our contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to our unlawful modification of the contract.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

710 LONG RIDGE ROAD OPERATING COMPANY II, LLC
(LONG RIDGE)
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

A.A Ribicoff Federal Building and Courthouse
450 Main Street, 4th Floor
Hartford, Connecticut 06103-3022
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3006

APPENDIX C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, regular part-time service, and per diem/casual service and maintenance Employees, including certified nurses assistants (CNAs), dietary aides, cooks, head cooks, housekeeping, laundry and maintenance Employees, central supply clerks, scheduler, rehabilitations aides, recreation assistants and receptionists employed by Respondent at its Westport facility, but excluding all other Employees, registered nurses (RNs), social workers, licensed practical nurses (LPNs), and other technical Employees, therapeutic recreation directors, medical records clerks, payroll clerk and guards, professional Employees and supervisors as defined in the Act.

WE WILL NOT threaten to call the police in response to employees' protected concerted or union activities.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT modify the contract's terms of our laundry and housekeeping employees without the Union's consent by conditioning our employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of our employees without notifying or bargaining with the Union over such changes or by failing to bargain with the Union concerning the terms of the employees' re-employment with us after being subcontracted to a subcontractor.

WE WILL NOT lay off and/or refuse to hire our employees without notifying or bargaining with the Union covering our decision to layoff our employees or not to hire them, laying off or terminating our employees in violation of our collective bargaining agreement with the Union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the this Order, offer Myrna Harrison and Newton Daye full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Myrna Harrison and Newton Daye whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the layoff or refusal to hire of Harrison and Daye, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the modification of the contract terms of our laundry and housekeeping employees and from the unlawful change of the practices calculating overtime and breaks of our employees, plus interest.

WE WILL rescind the modification in our contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to its unlawful modification of the contract.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

1 BURR ROAD OPERATING COMPANY II, LLC
(WESTPORT)
(Employer)

Dated _____ By _____
(Representative) (Title)

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A.A Ribicoff Federal Building and Courthouse
450 Main Street, 4th Floor
Hartford, Connecticut 06103-3022
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3006

APPENDIX D

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem/casual service and maintenance Employees, including current categories and future new and changed jobs in the service and maintenance bargaining unit including certified nursing assistants, physical therapy aides, housekeeping Employees, central supply clerks, nursing office secretary, secretary-receptionist, receptionists, medical records clerk-receptionist, maintenance Employees, social service designee, therapeutic recreational directors, recreation aides, Registered Nurses and Licensed Practical Nurses employed by Respondent including any new or expanded locations of Respondent but excluding all other Employees, guards, professional Employees and supervisors as defined in the Act.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT modify the contract's terms of our laundry and housekeeping employees without the Union's consent by conditioning our employees' rehire on the condition that they become new employees with loss of salary, benefits and seniority and by changing terms and conditions of employment of our employees without notifying or bargaining with the Union over such changes or by failing to bargain with the Union concerning the terms of the employees' re-employment with us after being subcontracted to a subcontractor.

WE WILL in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the modification of the contract terms of our laundry and housekeeping employees and from the unlawful change of the practices calculating overtime and breaks of our employees.

WE WILL rescind the modification in our contract, including changes in salary, seniority and benefits and restore the employees' terms and conditions of these employees to what they were prior to our unlawful modification of the contract.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees, plus interest.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

240 CHURCH STREET OPERATING COMPANY II, LLC
(NEWINGTON)

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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450 Main Street, 4th Floor
Hartford, Connecticut 06103-3022
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860-240-3522.

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APPENDIX E

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem/casual RNs, LPNs, and service and maintenance Employees, including certified nurses assistants, therapy aides, housekeeping employees, dietary employees, cooks, laundry employees, payroll clerks, rehabilitation aides, therapeutic recreation directors, receptionists, and maintenance employees employed by Respondent at its 107 Osborne Ave., Danbury, Connecticut location, but excluding the Director of Nurses, the Assistant Director of Nurses, the infection control nurse, the resident care coordinator, the staff development nurses, the employee health nurses, shift supervisors, unit coordinators, but excluding all other Employees, guards, professional Employees and supervisors as defined in the Act.

WE WILL NOT fail to adhere to provisions of our collective bargaining agreement with the Union by implementing a new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the unlawful changes in eligibility standards, regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of our employees, plus interest.

WE WILL rescind the our new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

107 OSBORNE STREET OPERATING COMPANY II, LLC
(DANBURY)

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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Hartford, Connecticut 06103-3022
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860-240-3522.

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APPENDIX F

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem service and maintenance Employees, including certified nurses assistants, porters, activity assistants, housekeepers, dietary aides, cooks, cooks helpers, laundry aides, and maintenance Employees, but excluding all other professional Employees, all technical Employees, all business office clerical Employees and all guards, professional Employees and supervisors as defined in the National Labor Relations Act, employed at the Center, 341 Jordan Lane, Wethersfield, CT 06109.

WE WILL NOT fail to adhere to provisions of our collective bargaining agreement with the Union by implementing a new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the unlawful changes in eligibility standards, regarding holiday pay, personal days, vacation days, sick days and uniform allowances and from the unlawful change of the practices calculating overtime and breaks of our employees, plus interest.

WE WILL rescind the our new eligibility standard for employees regarding holiday pay, personal days, vacation days, sick days and uniform allowance and restore the standards for eligibility that were in place prior to the changes.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

341 JORDAN LANE OPERATING COMPANY II, LLC
(WETHERSFIELD)

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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Hartford, Connecticut 06103-3022
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APPENDIX G

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union concerning employees employed in the following appropriate unit:

All full-time, part-time, and per diem/casual service and maintenance and clerical Employees, including certified nurses assistants, occupational therapy aides, ward clerks, dietary aides, cooks, head cooks, housekeeping aides, laundry aides, assistant maintenance supervisor, recreation aides, physical therapy aides, central supply clerk, billing, collections and accounts receivable clerks and medical records clerks employed by Respondent at its 245 Orange Avenue, Milford, Connecticut facility, but excluding, receptionists, payroll/accounts payable clerks, computer operators, data entry clerks, admissions clerks, licensed practical nurses, registered dietetic technicians, rehabilitation therapy technicians, physical therapy assistants, dieticians, registered respiratory therapists, certified respiratory therapy technicians, speech pathologists, social workers, administrative assistants, marketing director, manager of case management, head receptionist/secretary, executive chef, managerial Employees, confidential Employees, technical Employees and all guards, professional Employees and supervisors as defined in the Act.

WE WILL NOT unilaterally change terms and conditions of employment of our employees by discontinuing our practice of including all time encompassed by lunch and breaks in tallying our employees' daily "hours worked" for purposes of calculating overtime payments and implementing a new policy and practice excluding time taken on these breaks and by implementing a new eligibility standard for payment at the premium rate for hours worked on holidays by our employees.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for their loss of wages and benefits that resulted from the unlawful change of the practices calculating overtime and breaks of our employees, plus interest.

WE WILL discontinue our practice of excluding all time encompassed by lunch and breaks in tallying employees' daily "hours worked" for purposes of calculating overtime payments and rescind our new eligibility standard for payment at premium rate for hours worked on holidays by our employees.

WE WILL on request, bargain in good faith with the Union concerning the terms and conditions of employment of the employees employed in the appropriate unit described above.

245 ORANGE AVENUE OPERATING COMPANY II, LLC
(WEST RIVER)

(Employer)

Dated _____ By _____

(Representative) (Title)

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